A

NEW ABRIDGEMENT

AND

CRITICAL REVIEW

OF THE

STATE TRIALS.

Wherein are inſerted,

Several TRIALS not in any other Collection.

ALSO,

Some TRIALS that were taken in Haſte and ſcarce Intelligible, are brought into Regular ORDER; and many Deficiencies throughout the Whole ſupply'd.

LIKEWISE,

REMARKS are made on each TRIAL, ſhewing what the Law in Criminal Caſes anciently was; how it has been altered, and ſtands at this Day. Together with impartial MEMOIRS of the Times and Characters of the SUFFERERS.

To which is added,

A Compleat ALPHABETICAL INDEX, of the Names of the Priſoners tried, the Times when, their Crimes, and their Puniſhment.

By Mr. *SALMON.*

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THE

PREFACE.

THE CROWN LAW is no where ſo fully explained and illuſtrated as in the STATE TRIALS: But as every Man is not qualified to diſtinguiſh Caſes that have a near Reſemblance to each other, or diſcern the Force of every Argument advanced by the Learned Counſel in theſe Trials, it has been thought fit to draw up a Summary of them, and make ſuch Remarks on each Caſe, as may enable common Readers to collect what the Law antiently was, and how it has been altered, and ſtands at this Day in criminal Matters; which is a part of Learning, that every Man, who is a Subject of *England*, ought to have a general Knowledge of, ſince at one Time, or other, he may poſſibly be concerned, either in proſecuting or defending Suits of this Nature, for himſelf or his Friends. But Gentlemen in the Magiſtracy, or Commiſſion of Peace, can never be qualified to exerciſe their reſpective Offices, or ſerve their Prince or Country with any tolerable Reputation, who are perfectly Strangers to this Branch of our Laws. Therefore the Digeſting theſe Trials, and reducing them within ſuch Bounds, as Gentlemen may be able to come at them on moderate Terms, will, probably, be of ſome Service to the Publick.

Another

PREFACE.

Another Deſign of this REVIEW is to enquire into the HISTORY and CHARACTERS of thoſe who have been thus brought upon the Stage, and in whoſe Fate all Mankind almoſt have intereſted themſelves. The Want of this Enquiry, has been held a material Omiſſion in the STATE TRIALS, and occaſioned ſome Reflections on the Compilers: Though it may very juſtly be ſaid in their Excuſe, That as their Deſign was Great and Noble, and of itſelf of infinite Service to the Publick, ſo never any Thing was brought to Perfection at once. There will in Eſſays of every Kind, be Room left for Additions and Improvements; and I am ſatisfied the World will be pleaſed to ſee ſuch a Supplement to that Work, as will render it ſtill more Uſeful and Entertaining, and accordingly afford it a favourable Reception, and the rather, as the Law is here exemplified by ſuch familiar Inſtances, as renders this Kind of Reading, eaſy and pleaſant, which would otherwiſe prove a dry Laborious Study.

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A CRITICAL REVIEW OF THE STATE TRIALS.

1388 11 Rich. 2. *Trial of* Treſilian, *&c.*

Proceedings in Parliament againſt *Alexander Nevil*, Archbiſhop of *York*, *Robert Vere* Duke of *Ireland*, *Michael de la Pole* Earl of *Suffolk*, *Robert Treſilian* Lord Chief Juſtice of *England*, and Sir *Nicholas Brambre* ſome time Mayor of *London*, *Feb.* 3. 1388. 11 *Richard* II.

Imperfect.

THIS is a patched up partial Narrative of a ſucceſsful Rebellion, rather than a Trial: However, as it is bound up with the ſecond Collection of Trials, it might be thought an Omiſſion not to examine it.

We are told, that the Nobility, ſeeing the miſerable State of the Kingdom under a profuſe and arbitrary Miniſtry, *Men of mean Extraction*, prevailed on the King *(then a Minor of about ſeventeen Years of Age)* to aſſemble a Parliament on the 1ſt of *October*, 1386. to redreſs their Grievances. In which Parliament, among other Acts, *John Fortham* Biſhop of *Durham*, was diſcharged of his Office of Treaſurer, and *John Gilbert* Biſhop of *Hereford*, appointed in his Place; and *Michael de la Pole* Earl of *Suffolk*, and Chancellor of *England*, was diſmiſſed, and immediately after impeached of the following High Crimes and Miſdemeanors, *viz.*

Miniſters diſplaced.

Earl of Suffolk *impeached.*

The Articles againſt him.

1. That being Chancellor, and ſworn to act for the Profit of the King, he had deceived his Majeſty in his Grants, and purchaſed Crown Lands at an under Value, not regarding the great Neceſſities of the King and Realm.

2. That whereas nine Lords were aſſigned by the laſt Parliament to examine the State of the King and Realm, and put it into better Order; this was not done, through the ſaid Earl's Default, who was the prime Officer or Miniſter.

3. That a Supply, given for the Defence of the Sea, had been miſapplied, by the Default of the ſaid Chancellor.

4. That he had obtained a Grant of fifty Pounds *per Annum* out of the Cuſtoms.

5. That whereas the Maſter of St. *Anthony*, by being a Schiſmatick, had forfeited his Revenues, amounting to 100 Marks *per Annum*, the Earl had farmed them of the King at 20 Marks *per Annum*, and kept the ſucceeding Maſter out of Poſſeſſion, till he had extorted a Sum of Money from him.

6. That, while he was Chancellor, he had ſealed divers illegal Charters and Pardons, for Treaſon, Murder, *&c.*

7. That he had miſapplied Money given for the Relief of the City of *Ghent*, which was loſt by his Default.

The Earl's Anſwer to Part of the Articles. The reſt omitted.

To which the Earl anſwered, that he neither purchaſed or accepted any Lands of the King while he was Chancellor, unleſs an hundred Marks *per Annum*, which he had by way of Exchange for a Revenue he was entitled to out of the Cuſtoms. The ſecond Article the Compiler of the Trials has omitted the Anſwer to: The third Article he denied, and they ſeem to allow it was not proved: Nor do they give us his Anſwer to the 4th Article; or to the 5th, 6th, or 7th. Only they tell us in general, that he denied ſome of them, and confeſſed and excuſed others.

The Commons Reply.

The Commons replied, That his having acknowledged the making an Exchange with his Majeſty, was a Confeſſion of his conſenting to alienate the Lands of the Crown, while he was Chancellor; which was contrary to his Oath and Duty. And the Lords thereupon adjudged, That the Grants the Earl had obtained ſhould revert to the Crown: That all his Lands ſhould be confiſcated: That he ſhould pay a Fine to the Crown, and be impriſon'd in the Caſtle of *Windſor*.

Adjudged that he ſhould be impriſon'd; and his Eſtate confiſcated.

Lords Commiſſioners appointed, in whom both the legiſlative and executive Power is lodged.

That the Parliament afterwards by ſeveral Acts, appointed ſeven of the Lords Spiritual, five of the Temporal Lords, and Sir *John Devereux*, Kt. Commiſſioners, to reform the State, and adminiſter the Government for a Year, *viz.* 1. *William* Archbiſhop of *Canterbury*, 2. *Alexander Nevil* Archbiſhop of *York*, 3. *Thomas Arundel* Biſhop of *Ely*, Lord Chancellor, 4. *William Wickham* Biſhop of *Winchester*, 5. *John Gilbert* Biſhop of *Hereford*, 6. *Thomas* Biſhop of *Exeter*, 7. *Nicholas* Abbot of *Waltham*, Lord Privy Seal. 8. *Edmund Langly* Duke

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Duke of *York*, 9. *Thomas of Woodſtock* Duke of *Glouceſter*. 10. *Richard* Earl of *Arundel*, 11. *John* Lord *Cobham*, 12. *Richard* Lord *Scrope*, and, 13. Sir *John Devereux* Kt. enacting, That if any refuſed to obey their Ordinances, they ſhould forfeit their Goods for the firſt Offence, and their Lives for the ſecond; and on the 20th of *November* 1386. the Parliament was diſſolved.

That ſoon after the Riſing of the Parliament, the ſaid Earl of *Suffolk* and his Confederates, inſinuated into the King, that the ſaid Statutes were prejudicial to his Honour, and derogatory to his Prerogative; and while they were in Force, he was but the Shadow of a King: That the ſaid Earl being releaſed out of *Windſor* Caſtle, he, with the Duke of *Ireland*, and Chief Juſtice *Treſilian*, incited the King to deſtroy the Duke of *Glouceſter*. The Earls of *Arundel*, *Warwick*, *Derby*, and *Nottingham*, with others of their Party, and for that End, conſpired with *Alexander* Archbiſhop of *York*, and Sir *Nicholas Brambre*, to diſpatch the ſaid Lords; and wrote Letters to the *French* King, to aſſiſt them in ſeiſing the ſaid Noblemen; and alſo prevailed with the Judges, to declare them guilty of High Treaſon, in procuring the ſaid late Statutes.

The Earl of Suffolk *is charged with conſpiring againſt the Duke of* Glouceſter.

That the ſaid five Lords, keeping Spies in all Parts of the Kingdom, and intercepting ſome Letters from Court, diſcovered a Plot againſt them; and believing it to be agreeable to the Law of Nature to repel Force by Force, every one of them, according to his Ability, levied a Power *for the Preſervation of the King and Kingdom* (which the Patriots of 41. made a Precedent, no Doubt, for fighting in the King's Name againſt his Perſon.) And with theſe Forces the Earl of *Arundel* marched towards *London*: Whereupon the Earl of *Suffolk* and his Accomplices, adviſed the King to iſſue a Proclamation, commanding the Citizens to treat them as Rebels; and that he ſhould not meet the Parliament at *Candlemas* as the ſaid Commiſſioners had appointed, unleſs the Duke of *Glouceſter*, the Earls of *Warwick*, *Arundel*, and the reſt of the Commiſſioners, would ſwear, that neither they, nor any in their Name, ſhould accuſe the ſaid Earl of *Suffolk*, Duke of *Ireland*, and the reſt of the late Miniſtry.

The Duke of Glouceſter, *Earl of* Arundel, *&c. raiſe Forces in the King's Name againſt his Perſon.*

The Duke of Glouceſter, *&c. impeach the Earl of* Suffolk, *and the reſt of the late Miniſtry, of High Treaſon before the King.*

In the mean time the Duke of *Glouceſter*, the Earl of *Arundel*, &c. being arrived with their Army at *Waltham-Croſs*, the 14th of *November*, ſent ſome of their Members to the King at *Weſtminſter*, to charge the Archbiſhop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, Chief Juſtice *Treſilian*, and Sir *Nicholas Brambre*, with High Treaſon.

The King demanded what they would have: They anſwered, That the Traitors which were about him, and filled his Ears with falſe Reports, might be puniſhed; for it was better ſome few ſhould die for the People, than the whole Nation ſhould Periſh.

Whereupon his Majeſty ſent the Lords Commiſſioners a ſafe Conduct, and they appeared before his Majeſty at *Weſtminſter-Hall*; where they again impeached the Archbiſhop of *York*, the Duke of *Ireland*, &c. of High Treaſon, offering to maintain the Charge by ſingle Combat: But the King, having appointed the Parliament to meet the next Day after *Candlemas*, told them the Controverſy ſhould be heard and determined there.

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But the Earl of *Suffolk* fled to *Calais*, and the Archbiſhop of *York* and the Biſhop of *Durham*, abſconded; while the Duke of *Ireland*, went into *Cheſhire*, *Lancaſhire*, and *Wales*, to raiſe Forces for the King, and oppoſe thoſe of the diſaffected Lords. The Earl of *Arundel* afterwards engaging the Duke of *Ireland* at *Chipping Norton* in *Oxfordſhire*, as he was marching to *London*, part of the Duke's Forces revolted, and he was defeated, and forced to fly into *Flanders*.

The Earl of Suffolk *and ſome of the Miniſters fly.*

The Duke of Ireland *raiſes Forces for the King.*

He defeated, and to fly to Flanders.

In the mean Time Alderman *Brambre* held the City of *London* for the King, and was in Expectation of being joined by the Duke of *Ireland*; but the Earl of *Arundel* having defeated the Duke (as before related) and appearing with his victorious Troops before the Gates, the Mayor and Citizens of *London* thought fit to deliver him their Keys. After which all Places ſubmitted to the diſaffected Lords, who compelled the King to give them Audience in the *Tower*. They appeared indeed in an humble, ſuppliant Poſture before his Majeſty; but brought ſuch Numbers of armed Troops with them, that he durſt deny them nothing; and here again they appealed (or impeached) the Duke of *Ireland*, and the reſt of the King's Miniſters, of High Treaſon: After which Proclamation was made, That a Parliament ſhould be held the Day after *Candlemas*, where the accuſed Lords ſhould appear and anſwer the Charge of the Malecontents. The King was alſo compelled by the Faction to iſſue Orders for the apprehending ſeveral Miniſters and Officers of his own Houſhold, and thoſe who had adhered to him; and Sir *Simon Burleigh*, Sir *William Elman*, Sir *John Beauchamp*, Sir *Thomas Trevet*, Sir *John Salisbury*, and Sir *Nicholas Brambre*, were thereupon taken up, with many others they ſuſpected to be in a different Intereſt; but the Duke of *Ireland*, the Archbiſhop of *York*, the Earl of *Suffolk*, and Sir *Robert Treſilian*, had withdrawn themſelves, and were not to be found.

London *ſubmitted to the Malcontents.*

They force the King to give them Audience.

And give Orders for apprehending his own Miniſters.

The Parliament meeting the Day after *Candlemas*, the following Judges were taken off the Bench, and committed to the *Tower*, for anſwering ſeveral Queries that had been propoſed to them by the King at *Nottingham*, *viz.* Sir *Roger Fulthorp*, Sir *Robert Belknap*, Sir *John Carey*, Sir *John Holt*, and Sir *William Burleigh*, and *John Locton* the King's Serjeant at Law, was alſo committed with them.

The Judges taken off the Bench.

The Lord Chancellor, the Biſhop of *Ely*, opened the Parliament with a Speech, wherein he declared they were aſſembled to conſider how the Diſtractions of the Realm might be compoſed, the King better adviſed, the Mal-adminiſtration of the late Miniſters reformed and puniſhed, and the Kingdom defended by Sea and Land; declaring that all who had any Grievances to be redreſſed might be heard. Then the Duke of *Glouceſter*, and the other four diſſaffected Lords, preſented themſelves before his Majeſty, and ſaid, they came to purge themſelves of the Treaſons laid to their Charge by the accuſed Lords, (of the late

The Parliament opened with a Speech.

The Duke of Glouceſter *and the malcontent Lords deſire to purge themſelves of the Charge of Treaſon.*

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The King obliged to acknowledge them innocent. The Lords insist on their Priviledges.

late Miniſtry.) To whom the Lord Chancellor anſwered, That the King entertained ſuch honourable Thoughts of the Duke of *Glouceſter*, that he could not believe any one ſo near allied to him would be concerned in any treaſonable Attempt againſt his Majeſty: For which the Duke, and his four Companions (or rather Accomplices) returned the King their Thanks.

The Lords Spiritual and Temporal afterwards declared, That all great Matters moved in Parliament, touching the Peers, ought to be diſcuſſed and adjudged by the Courſe of Parliament, and by the Civil, or Common Law, in inferior Courts; which Claim or Declaration the King allowed.

The Malcontents exhibit 39 Articles againſt the King's late Miniſtry

Then the five Lords Appellants (the Duke of *Glouceſter* and his Accomplices) exhibited thirty-nine Articles againſt the accuſed Lords, the King's late Miniſters and Officers of State.

1. And firſt, they charge them as falſe Traitors to the King and Kingdom, in taking Advantage of his Majeſty's tender Age, framing falſe Stories, and making him entirely their own: While they rendered ſuſpected his loyal Lords and Leiges, by whom he ought to have been governed. That theſe Traitors had accroached to themſelves royal Power, by enſlaving the King, and leſſening his Prerogatives, making him ſo obedient to their Will, that he was ſworn to be adviſed and governed by them.

2. The Second charges the Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk* again, with obliging the King to take the Oath, and thereby keeping him in a State of Servitude.

3. The Third charges, that the ſaid three Noblemen, by the Advice of Sir *Robert Treſilian* and Sir *Nicholas Brambre*, would not permit the great Men of the Kingdom to come near the King, or ſuffer them to ſpeak to his Majeſty, unleſs in their Preſence and Hearing; accroaching to themſelves Royal Power, and aſſuming a Sovereignty over the Perſon of the King.

4. That the ſaid five late Miniſters would not ſuffer the King to grant any Petitions without their Aſſent; thereby turning the Hearts of the great Lords from his Majeſty, with Deſign to eſtrange his Heart from the Peers, and have the ſole Government of the Kingdom.

5. That they adviſed the King to grant the whole Realm of *Ireland*, and divers other Caſtles, Lordſhips, and Manors, to the Duke of *Ireland*; and to make divers Grants to others of the Crown-Lands, whereby the King was ſo impoveriſhed, that he could not ſupport himſelf, without laying Taxes and Impoſitions on his Subjects.

6. That they cauſed the King to make other Grants of the Crown-Lands to their Relations and Friends, of whom they received great Bribes.

7. That they cauſed the King to grant the ſaid Duke of *Ireland* and others, the Jewels of the Crown, and the Treaſure of the Kingdom, with the Tenths and Fifteenths, given by Parliament for Defence of the Realm, to the Value of one hundred thouſand Marks; and cauſed many good Ordinances of Parliament to be interrupted.

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8. That they put Governors into the Caſtles and Fortreſſes on the Frontiers of *France* and *Scotland*, who were not qualified for ſuch Poſts, without the Conſent of the Realm, whereby ſeveral Countries were loſt to the Enemy.

9. That they would not ſuffer the Laws to take their Courſe; but cauſed ſeveral Judgments of Parliament to be reverſed and annulled.

10. That they had cauſed ſeveral Pardons to be granted for Treaſons and Felonies.

11. That they adviſed the King to make the ſaid Duke King of *Ireland*, and excited his Majeſty to write Letters to the Pope to confirm the Grant, without the Knowledge or Aſſent of the Kingdoms of *England* or *Ireland*, in Diſheriſon of the Crown of *England*, and to the Deſtruction of the Nation of *Ireland*.

12. That the ſaid Sir *Nicholas Brambre* had taken two and twenty Perſons out of *Newgate*, ſome of them impriſoned for Debt, and others for Criminal Matters, and without any Proceſs of Law, cauſed all their Heads to be cut off (but one) at a Place called the *Foul Oak*, in *Kent*.

13. That the ſaid accuſed Miniſters had taken great Bribes for the Maintenance of Suits; and once took Bribes on both Sides.

14. That they cauſed ſome Lords, and others, to be put out of the King's Council.

15. That the laſt Parliament requiring the King to remove the five Miniſters from his Preſence, they cauſed the King to command the Mayor of *London* to kill ſuch of the Lords and Commons as were not of their Party; in which Execution the ſaid Miniſters were to have borne a Part.

16. That when the Mayor and Citizens of *London* had refuſed in the King's Preſence to murder the ſaid Lords and Commons, the ſaid five Miniſters prevailed on the King to leave the Parliament, and refuſe to treat with them on the Affairs of the Kingdom; unleſs they would promiſe not to proſecute the ſaid Miniſters.

17. That the Parliament having aſſigned twelve Lords to take upon them the Government of the Realm for one Year, with the King's Aſſent, againſt which no Man might adviſe his Majeſty, on Pain of Forfeiture of his Goods for the firſt Offence, and his Life for the ſecond; the ſaid five Miniſters inſinuated to the King, that the ſaid ordinance or Statute, and Commiſſion in Purſuance of it, were made to defeat his Royalty; and that all thoſe, who adviſed or procured the framing of them, were worthy to be put to Death as Traitors.

18. That they cauſed the King to aſſemble certain Lords Juſtices, and others, without the Aſſent of the Lords Commiſſioners and demanded their Opinions of divers ſuſpicious Matters, by which the King, the Lords, and the common People were brought into great Trouble.

19. That they cauſed the King to ride through the Nation, and ſummon the Lords, Knights, Eſquires, and others of the ſeveral Countries before him; obliging them to give Bonds, or take Oaths, to ſtand by him againſt all People, and to effect his Purpoſe, which

was

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was then the Will and Purpoſe of the ſaid traiterous Miniſters.

20. That the Realm was put to great Trouble by the ſaid Bonds and Oaths.

21. That they cauſed the King to go into diſtant Parts of the Kingdom, ſo as the Lords Commiſſioners could not adviſe with him; and the ſaid Ordinance, or Statute, was thereby defeated.

22. That the ſaid Duke of *Ireland*, by the Advice of the ſaid other four Traitors, had without the King's Commiſſion, or other ſufficient Warrant, made himſelf Chief Juſtice of *Cheſter*, and held all Manner of Places there; and alſo, accroaching to himſelf Royal Power, had raiſed Forces in that County, in order to deſtroy the loyal Lords, and other the King's liege Subjects.

23. Alſo, that they had cauſed *John de Blois*, Heir of *Britany*, and the King's Priſoner, to be ſet at Liberty, without Aſſent of Parliament, or any ſufficient Warrant.

24. That they cauſed the King to have a great Retinue, to whom he gave Badges, to impower them to execute their ſaid Treaſons.

25. That they cauſed the King to ſummon before him, to the Caſtle of *Nottingham*, the Day after St. *Bartholomew* then laſt paſt, divers Juſtices and Lawyers, and there conſtrained them to ſet their Hands to the Anſwers of certain Queſtions; by means whereof thoſe about the King might have Colour to put to Death the Duke of *Glouceſter*, and the other Lords, who in the laſt Parliament were ordained to have the Governance of the Realm.

Queries reſolved by the Judges at Nottingham.

(1.) The firſt Queſtion was, Whether the New Statute, Ordinance, and Commiſſion, were hurtful to the Prerogative?

It was unanimouſly anſwered, *They were hurtful, becauſe againſt the King's Will.*

(2.) How they ought to be puniſhed that procured the ſame?

Anſwered unanimouſly, *They deſerved Death.*

3. How they ought to be puniſhed that moved the King to conſent to the making them?

Anſw. *They ought to loſe their Lives.*

(4.) How they ſhould be puniſhed that *compelled* the King to conſent to the ſaid Statutes, *&c*?

Anſw. *They ought to ſuffer as Traitors.*

(5.) How they ought to be puniſhed who interrupted the King in exerciſing his Royal Prerogative?

Anſw. *They ought to be puniſhed as Traitors.*

(6.) Whether the King might oblige the Parliament to diſpatch the Buſineſs propoſed by him, before they proceeded to any other?

Anſw. *The King ought to have the Rule and ordering of all ſuch Articles as are preſented in Parliament; and if any one preſumed to go contrary to this Rule, he ought to be puniſhed as a Traitor.*

(7.) Whether the King might not diſſolve the Parliament, when he pleaſed?

Anſw. *He might.*

(8.) Whether the Lords and Commons, without the King's Aſſent, might impeach his Officers and Juſtices in Parliament?

Anſw. *They might not; and he that did, ought to ſuffer as a Traitor.*

(9.) How he was to be puniſhed who moved the Parliament, that the Statute wherein *Edward*, the Son of King *Edward*, Great Grandfather to the then King, was indicted in Parliament, might be ſent for? By Inſpection of which Statute the ſaid new Statute or Ordinance and Commiſſion was deviſed.

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Anſwered unanimouſly, *That as well as he that called for, as the other, who by Virtue of the ſaid Motion brought the ſaid Statute into the Houſe, ought to be puniſhed as publick Offenders and Traitors.*

10. Whether the Judgment given in Parliament againſt the Earl of *Suffolk* was erroneous and revocable?

Anſw. *That the ſaid Judgment was erroneous and revocable in every Part.*

Atteſted by *Alexander* Archbiſhop of *York*, *Robert* Archbiſhop of *Dublin*, *John* Biſhop of *Durham*, *Thomas* Biſhop of *Cheſter*, *John* Biſhop of *Bangor*, *Robert* Duke of *Ireland*, *Michael* Earl of *Suffolk*, *John Rippon* Clerk, and *John Blake.*

26. That ſaid five Traitors contrived that the ſaid five Lords Appellants (the Duke of *Glouceſter*, &c.) ſhould be privately indicted and attainted of High Treaſon in *London* or *Middleſex*; and for that End procured *Thomas Huske* to be made Under-Sheriff of *Middleſex*, who undertook that the ſaid Indictments and Attainders ſhould be accompliſhed: That for the better effecting their ſaid Treaſons, they cauſed the King to ſend Letters by one *John Rippon* Clerk, to the Mayor of *London*, to arreſt the Duke of *Glouceſter*, and others; and one *John Blake* carried a Bill of Information to the Mayor againſt them, by which they were to be indicted and attainted; which Information ſet forth: "That the Appellants, "and ſeveral other of the Lords and Commons, "had traiterouſly conſpired and confederated "to make a Statute and Commiſſion againſt "the Royalty of the King, and in Derogation of "his Crown, and conſtrained the King to paſs it "againſt his Will; and had traiterouſly hin-"dered the King from exerciſing his Royalty, "to the great Diſheriſon of his Majeſty, and "in Derogation of his Crown;" And that the ſaid traiterous Miniſters ſet a Watch to give Notice of the Duke of *Lancaſter*'s landing, that he might be arreſted on his Arrival.

An Information drawn up againſt the Lords Appellants.

27. That the ſaid five Miniſters, the Duke of *Ireland*, &c. alſo poſſeſſed the King, that all who cauſed the ſaid Statute, *&c.* to be made, had thereby a Purpoſe to degrade him, and finally to depoſe him; and cauſed him to hold them as Enemies and Traitors.

28. That the ſaid five Miniſters adviſed his Majeſty, by his own Power, and by the Aſſiſtance of his Enemies of *France*, to deſtroy the ſaid Lords, and others, who aſſented to the making the ſaid Statute as privately as might be.

29. That they adviſed his Majeſty to ſend Letters to the King of *France*, requeſting that Prince with all his Power and Advice, to be aiding and aſſiſting in deſtroying the ſaid Lords, *&c.*

30. That the ſaid Archbiſhop, Duke of *Ireland*, and Earl of *Suffolk*, accroaching to themſelves Royal Power, cauſed his Majeſty to promiſe the *French* King, for ſuch Aid and Aſſiſtance, to ſurrender to him *Calais*, and all other

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other Fortreſſes on the Confines of *Picardy* and *Artois*, with the Towns of *Cherburg* and *Breſt*.

31. That the ſaid five Miniſters had contrived an Interview between the ſaid Kings of *France* and *England* in the Marches of *Calais*; where the ſaid *Thomas* Duke of *Glouceſter*, *Richard* Earl of *Arundel*, and *Thomas* Earl of *Warwick*, with ſeveral others, were to have been treacherouſly murdered.

32. That they cauſed the King to ſend for ſafe Conducts from *France*, for Sir *John Salisbury*, Sir *John Lancaſter*, and others, who were to go over to *France* to put the ſaid Treaſon in Execution.

33. That the ſaid Sir *Nicholas Brambre*, and others of the ſaid Traitors, went into the City without the King's Knowledge; and, in his Name, cauſed all the Trades in the City to ſwear to perform divers Matters not lawful; and particularly, to keep and maintain the King's Will and Purpoſes to their Power againſt all Rebels; and that they would live and die with him againſt all thoſe who ſhould deſign any Treaſon againſt the King; and for that Purpoſe ſhould appear on the Summons of the Mayor, and be ready to reſiſt all ſuch Traitors: *Their Deſign being to engage the People of* London *to raiſe their Power, to deſtroy the ſaid loyal Lords and others.*

34. That the ſaid Miniſters cauſed to be proclaimed through *London*, That none of the King's Subjects ſhould aid or aſſiſt the Earl of *Arundel*, but avoid all his Party, upon Pain of being proceeded againſt as Rebels.

35. That the ſaid Sir *Nicholas Brambre*, by the Advice of the ſaid other Miniſters, cauſed it to be proclaimed, that none ſhould ſpeak ill of the ſaid evil Miniſters, upon Pain of forfeiting all they had.

36. That the ſaid five Miniſters cauſed Sheriffs to be made, that they might get ſuch Perſons returned Knights of the Shire as they ſhould name.

37. That they cauſed the King to ſend Letters to the Sheriffs and other Officers, to aſſemble all their Power to join the Duke of *Ireland* againſt the ſaid Lords Appellants, and to make War upon them.

38. That they cauſed the King to write to the Duke of *Ireland*, that they were all appealed (impeached) of Treaſon, and that he had given a Day till next Parliament, and taken both Parties into his Protection: But that, if the Duke of *Ireland* ſhould have ſufficient Power, he ſhould however march on and come to him, and that he would meet him with all his Forces, and venture his Royal Perſon; and that he and the whole Nation were in great Danger, if they were not relieved: This the Duke was to declare to the People, and to aſſure them, that the King would pay them all their Wages. By Virtue of which Letters the ſaid Duke raiſed great Numbers of Men at Arms, and Archers, in *Lancaſhire*, *Cheſhire*, *Wales*, and elſewhere, to deſtroy the ſaid Lords, and all others who aſſented to the ſaid Statute, Ordinance, and Commiſſion.

39. The laſt Article charges the Duke of *Ireland* with raiſing the ſaid Forces, and marching with them from the County of *Cheſter* to *Ratcote-Bridge* in *Oxfordſhire*, in order to deſtroy the ſaid Lords Appellants, viz. *Thomas* Duke of *Glouceſter* Conſtable of *England*, *Henry* Earl of *Derby* (who afterwards uſurped the Throne) *Richard* Earl of *Arundel*, *Thomas* Earl of *Warwick*, and *Thomas* Earl *Marſhal*, accroaching to himſelf Royal Power, and diſplaying the King's Banner in his Army, againſt the State of the King and his Crown.

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Then the Lords Appellants declared, they were ready to prove every Article; and the Perſons appealed (the late Miniſters) were ſolemnly ſummoned to appear and anſwer the Appellants: And the Parties accuſed not appearing, the Lords Appellants demanded, that they might be adjudged and convicted of the ſaid Treaſons: But the King ordered the Lords to examine the ſaid Articles; and the Juſtices, Serjeants, and other Sages of the Law, were commanded to give their Advice to the ſaid Lords of Parliament, how they ought to proceed in the ſaid Appeal: Whereupon the ſaid Juſtices, Serjeant, &c. declared, *That the ſaid Appeal was not made, or brought, according as the one Law or the other required.*

The late Miniſtry ſummoned to appear and anſwer the Articles.

The Judges declare, the ſaid Appeal or Impeachment to be illegally brought.

However, the Lords, by the Aſſent of the King, reſolved, That this Appeal was well and duly brought, according to the Laws and Courſe of Parliament, by which they would adjudge of it: Then the Appellants demanded again, that the Default of the Parties accuſed might be recorded; and the ſaid Chancellor (the Biſhop of *Ely*) in the Name of the Clergy, declared, that they could not by any Means be preſent at Proceedings where Sentence of Death was to be paſſed; and the Clergy delivered in a Proteſtation in Writing, importing, *That neither in reſpect of Favour, or for fear of any Man's Hate, nor in hope of Reward, they deſired to abſent themſelves; but only as they were bound by the Canon, not to be preſent at any Man's Arraignment or Condemnation*; and they ſent the like Proteſtation to the Commons which was allowed of.

The Lords reſolve, it was legally brought.

The Clergy proteſt they could not by the Canon be preſent where Sentence of Death was to be paſſed.

On the 13th of *February* the Biſhop of *York*, the Duke of *Ireland*, the Earl of *Suffolk*, and Sir *Robert Treſilian*, being ſummoned a third Time, their Defaults were recorded; and the Lords declared fourteen of the Articles to be Treaſon, and by Aſſent of the King, did adjudge the ſaid four Miniſters to be guilty of High Treaſon, and that they ſhould be drawn and hanged as Traitors to the King and Kingdom, and their Lands and Tenements, Goods and Chattels, forfeited.

Four of the Miniſters condemned as Traitors, unheard.

On the 17th of *February*, Sir *Nicholas Brambre*, the fifth of the ſaid accuſed Miniſters, being in Cuſtody in the *Tower*, was brought before the Parliament, and charged with the Treaſons contained in the ſaid Articles, when he deſired Time to prepare for his Defence, which was denied, and the Judges required him to anſwer immediately and diſtinctly to the ſaid Treaſons. Whereupon he declared, he was ready to fight with any Man that ſhould brand him with that ignominious Mark; and the Appellants declared they were ready to accept the Challenge. But the Lords reſolved, that Battle did not lie in this Caſe,

Sir Nicholas Brambre *brought to his Trial.*

Offers to clear himſelf by ſingle Combat.

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and that the Matter ſhould be determined in Parliament.

The Mob come down to the Parliament Houſe, to accuſe him.

In the mean Time the Rabble came down from *London*, and complained of manifold Injuries committed by Sir *Nicholas Brambre*; and while the Caſe of this Knight was under Debate, the Lord Chief Juſtice *Treſilian*, being apprehended in a Houſe in *Palace-Yard*, was dragged into the Hall by the Soldiers. It was demanded of him, what he could ſay, why Judgment ſhould not be executed upon him? But the Compiler of this Volume of Trials tells us, he had nothing to ſay for himſelf, and that thereupon he was ſent to the *Tower*, from whence he was dragged on a Hurdle to the Gallows; and that he refuſed to mount the Ladder till he was beaten with Clubs, and forced up, and then he told the Hangman he ſhould not die as long as he had any Thing about him: Whereupon he was ſtripped, and certain Images were found like the Signs in the Heavens, and the Head of a Devil painted, and the Names of many Devils written in Parchment; which being taken away, he was hanged naked for ſome Time, and then his Throat was cut; and his Body having hung till Morning, was given to his Wife, who buried it in *Grey Friars*

Lord Chief Juſtice Treſilian *apprehended, and ordered to be executed. Uſed barbarouſly.*

Ridiculous Account of Charms about him.

Sir Nicholas Brambre *executed.*

Sir *Nicholas Brambre* bring brought before the Parliament again the 20th of *February*, and being able to make no anſwer to the Articles (ſays the Compiler) the like Sentence was pronounced againſt him; and he was drawn upon a Hurdle from the *Tower* to *Tyburn*, where he ſhewed himſelf very penitent, and begged Pardon of all he had offended, particularly of one *Northampton*, who attended his Execution, and whoſe Father had been Mayor of *London*, and wrongfully accuſed by *Brambre* of a Conſpiracy againſt the State, for which *Northampton*'s Lands were confiſcated, and he very hardly eſcaped with his Life.

The Judges impeached, and tried.

After theſe Executions, *viz.* on the 2d of *March*, Sir *Robert Belknap*, Sir *John Holt*, Sir *Roger Fulthorpe*, Sir *William Burleigh*, and Sir *John Carey*, the Judges who had anſwered the King's Queries at *Nottingham*, together with *John Locton*, the King's Serjeant at Law, having been impeached by the Commons, were called to anſwer before the Lords.

Their Defence.

They ſaid in their Defence, that the Anſwers they were charged with were not the ſame they had given; and that they were threatened and forced to ſign them by the Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*; and deſired they might be mercifully dealt with.

Condemned as Traitors.

However, the Lords thought fit to adjudge them all to be Traitors, and paſſed Sentence on them to be drawn and hanged as ſuch.

The Lords Spiritual interpoſe, and ſave their Lives.

This being reported to the Archbiſhop of *Canterbury* and the Biſhops, who were retired into the King's Chamber while theſe Cauſes were trying, they returned to the Parliament Houſe, and begged of the King and Peers, for the Love of God, the Virgin *Mary*, and all Saints, they would not put the Judges to death: The five Lords Appellants alſo thought fit to interpoſe, and deſire their Lives might be ſpared: Whereupon they were remanded to the *Tower*, and afterwards baniſhed to *Ireland*.

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John Blake, the King's Council, being impeached by the Commons for drawing up the ſaid Queries, and contriving the Death of the ſaid Lords Appellants; and *Thomas Uske*, for procuring himſelf to be made Under-Sheriff, in order to get them indicted and attainted, were brought before the Lords, the third of *March*, to anſwer that Charge. They ſaid in their Defence, that what they had done was by the King's Command: But the Lords replied, this Excuſe made their Crime the greater; for they knew the Miniſters had accroached to themſelves Royal Power, and that it was theirs, and not the King's Command, and paſſed Sentence on them as Traitors; in purſuance whereof they were executed the ſame Day.

Blake *and* Uske *impeached and tried.*

Condemned and executed.

On the 6th of *March Thomas* Biſhop of *Chicheſter*, being impeached by the Commons, for exciting and threatening the Judges, to make them ſign the ſaid Queries and Anſwers, and for concealing what they had done, was brought before the Parliament, and anſwered, that the Judges were not excited or charged to ſay any Thing but what the Law was; and as to his concealing the ſaid Treaſon, he was under Engagements not to diſcover it.

Biſhop of Chicheſter *tried.*

Avers the Judges were not threatened.

On the 12th of *March*, *Simon de Burleigh*, *John de Beauchamp*, *James Baroverſe*, and *John Salisbury*, were brought to the Bar of the Houſe of Lords, being impeached for the firſt of the ſaid Articles, and for concealing the ſaid Treaſons; and *Simon de Burleigh*, and *John Beauchamp*, were charged alſo as principal Actors in the ſaid Treaſons. To which they all pleaded Not Guilty; and Sir *Simon Burleigh* being a popular Man, great Intereſt was made to ſave him: But at length on the 5th of *May*, Sir *Simon* was condemned as a Traitor, and beheaded on *Tower-Hill*, the King pardoning the reſt of the Sentence. Sir *John Beauchamp*, Steward of the King's Houſhold, Sir *James Baroverſe*, and Sir *John Salisbury*, Gentlemen of the Privy Chamber, alſo were condemned: The two firſt were beheaded on *Tower-Hill*, and Sir *John Salisbury* was drawn to *Tyburn* and hanged there. The Biſhop of *Chicheſter* alſo was condemned; but he being the King's Confeſſor, was only baniſhed to *Ireland*.

Burleigh, Beauchamp, &c. *tried.*

Condemned and executed.

Biſhop of Chicheſter *condemned, but pardoned as to Life.*

From theſe numerous Convictions and Executions, this was called the UNIVERSAL PARLIAMENT.

Theſe Proceedings have, ſince the Revolution been mightily cried up, as Precedents for future Ages to imitate; but if we come to examine them with a little Attention, poſſibly there are few People that would deſire to ſee them copied in every Inſtance.

Remarks on the Trials of the Lord Chief Juſtice Treſilian, *and the reſt of the King's Miniſters and Officers.*

The diſaffected Lords had infuſed ſuch a Spirit of Diſcontent into the Members of Parliament againſt the Adminiſtration, that notwithſtanding the *French* King was upon the Point of invading the Kingdom with a prodigious Fleet and Army, and the Miniſtry had raiſed two hundred thouſand Men to oppoſe the Deſcent, the Parliament would not grant the King one Penny towards the defence of their Country, unleſs he would conſent to the Ruin of thoſe Noblemen who had ſerved him wih the greateſt Fidelity and Affection. *In* Rapin's *Words*, *So great was the Hatred they had*

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had entertained againſt the Lords in the Adminiſtration, that, in order to ruin them, the Parliament ſcrupled not to hazard the Loſs of the whole Kingdom, telling the King, the Confiſcations of the Eſtates of his Miniſters, who had misbehaved themſelves, were ſufficient to anſwer the Occaſions of the State; in which obſtinate and perverſe Temper, I preſume, no Body deſires to ſee future Parliaments imitate them.

They afterwards compelled the King to diſplace ſeveral of his Miniſters, and to transfer his Authority, (and indeed a greater Authority than ever any King of *England* exerciſed) to certain Lords; among which were the Duke of *Glouceſter*, the Earl of *Derby*, the Earl of *Arundel*, and other Malcontents, who were in a Conſpiracy to depoſe him: And when the King reſumed his Authority, and reſtored the Miniſters they had forced him to diſplace and puniſh, they raiſed an Army to compel his Majeſty to yield to their Demands, and eſtabliſh their Tyranny over himſelf and his Subjects, cauſing ſuch a Houſe of Commons to be retained by their Influence, as were abſolutely at their Devotion; and they had already made a Majority in the Houſe of Lords.

It was when the Kingdom was in the extremeſt Danger of a *French* Invaſion, *Anno* 1386. that they compelled the King to turn out his Treaſurer the Biſhop of *Durham*, and the Earl of *Suffolk* the Chancellor, and impeached the Earl of high Crimes and Miſdemeanors; but if we take a View of the Articles againſt the Earl, it is no ſmall Argument of his Innocence, that they could find ſo little to accuſe him of; and would the Compiler have favoured us with his whole Defence, probably it would have appeared no more than a malicious Proſecution, to deprive him of that Poſt, and put one of their own Creatures in his Room.

Certain it is, the King looked upon it as ſuch, and accordingly ſoon releaſed the Earl, and recalled him to the Council-Table, together with the Duke of *Ireland*, another Object of their Envy, whom they had driven from his Majeſty, and confiſcated his Eſtate; and his Majeſty's entertaining theſe Noblemen in his Service again, was held a ſufficient Ground for their breaking out into actual Rebellion, and raiſing ſuch a formidable Army, as neither the King or his Miniſters could afterwards promiſe themſelves any Security. No Wonder, therefore, that the Duke of *Ireland*, the Earl of *Suffolk*, and the reſt of the Miniſtry, fled from their Rage. What could they expect from a Parliament choſen and influenced by their mortal Enemies, and ſupported by an Army of forty thouſand Men?

We might juſtly expect, when the Malcontents were thus triumphant, All that Malice could ſuggeſt in the Proſecution of the King's Miniſters; and accordingly we find almoſt every poſſible Crime laid to their Charge in the thirty-nine Articles exhibited againſt the Miniſtry. But it is obvious, even from thoſe Articles, that the Treaſon they were proſecuted for, was Treaſon againſt the Malcontents, and not againſt the King. Their adviſing his Majeſty not to ſuffer himſelf and his Subjects to be tyrannized over by the diſaffected Lords, was the grand Offence, whatever elſe was pretended.

They charge the Miniſtry, indeed, with impoſing upon the King in his tender Age, inſinuating themſelves into his Favour, and keeping all others at a Diſtance they did not like; which are Arts poſſibly practiſed by moſt Miniſters: But as to the King's tender Age, he was now Eighteen or Nineteen, and might be allowed the Liberty ſure of chuſing his own Servants, and adminiſtring the Government, without delegating his Authority to others, much leſs to his Enemies. We find *Edward* III. his Grandfather, took upon him the Adminiſtration of the Government before he arrived at theſe Years; and by what Law then was King *Richard* to be treated as a Minor at a more advanced Age? Beſides, I do not know any Law that gives the Houſe of Lords the Guardianſhip of the King, if he was ſtill to be looked upon as an Infant. They charge the Miniſtry, indeed, with aſſuming, or accroaching to themſelves, Sovereign Power, and keeping the King in a State of Servitude, but it is evident, this was what they were aiming at and endeavouring themſelves; and their greateſt Quarrel with the Miniſters was, that they ſtood in the Way of theſe diſaffected Lords, and prevented their putting their Plot in Execution. And as to the principle Article, the Twenty-fifth, *That they had obliged the Judges to give their Opinions on certain Queries put to them.*

It ſeems they gave their Opinions voluntarily, and moſt of their Anſwers were very juſt. What ſhould we ſay to a parcel of diſcontented Lords, at this Time of Day, that ſhould compel the King to turn out his Miniſters, and puniſh them for obeying his Commands, and even to inveſt their factious Leaders with Legiſlative Authority? What is this ſhort of Treaſon.

And as to that Queſtion, *Whether the King can diſſolve the Parliament?* Does any one make a Doubt of it? And yet this is one of thoſe Queries, for the reſolving of which the Judges were impeached of High-Treaſon.

And when it was moved to bring the Proceedings againſt *Edward* II. into Parliament, as a Precedent for them to reſiſt and depoſe *Richard* II. What was this ſhort of Treaſon, as the Judges reſolved it? Eſpecially when it was notorious, that the diſaffected Lords intended to depoſe King *Richard*, and even *threatened* him with it to his Face, if he would not comply with them in the Ruin of his Miniſters.

The Malcontents, indeed, charge the King and his Miniſters with inviting over the *French*, to aſſiſt in making him abſolute: But as it is acknowledged by all Hiſtorians, that no Miniſtry ever exerted themſelves more effectually in the Defence of the Kingdom, when the *French* were about to invade it, this ought to be looked upon as a malicious Calumny, raiſed only to captivate the People, and give them ill Impreſſions of the Court.

Another Article we find was, that the Miniſtry appointed ſuch Sheriffs as might be ſerviceable to them in Elections; and if this were Treaſon, I doubt every Miniſtry has been guilty of it from that Day to this: But, admitting that the Facts laid in the Articles were Treaſon, the Proceedings againſt theſe Miniſters were certainly illegal, unjuſt, and cruel.

All

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All the Judges (who were, at that Time, of the diſaffected Lords own chuſing) with the reſt of the Lawyers, called to their Aſſiſtance on this Occaſion, were unanimous in their Opinions, *That the Appeal* (or Impeachment) *of theſe Miniſters was not made or brought according to Law.* The Lords, indeed, influenced by the Faction, reſolved the direct contrary. But if the Judges and Lawyers do not underſtand what our Conſtitution is, who muſt we have recourſe to for Satisfaction in ſuch Diſputes? I doubt we ſhall not find many in either Houſe that underſtand it much better; and, indeed, ſuch Preſentments are not at this Day, nor, as I remember have ever been ſince held to be legal: For theſe Miniſters were not appealed, or impeached, by the *Houſe of Commons*, but by the *five diſaffected Lords*. And it will be admitted by all, that have any Knowledge in parliamentary Affairs, that one Lord, or one Party of Lords, cannot impeach another. But theſe Noblemen went a Step further; for here were two Commoners, *viz.* Sir *Robert Treſilian* and Sir *Nicholas Brambre*, included in the ſame Impeachment; ſo that the Lords made themſelves both Proſecutors and Judges; and that of Commoners as well as Peers, which I believe the Commons, at this Day, would ſcarce acquieſce in.

There was this further Injuſtice and Irregularity in this Proceeding, that moſt of the Lords impeached were condemned unheard: But here was the *Name* of a Parliament, ſupported or influenced by an Army of forty thouſand Men, and that gave a Sanction to all their Proceedings, Right or Wrong. Indeed they compelled the King, afterwards, to paſs an Act in the ſame illegal Parliament, to confirm their Proceedings; but this could not warrant the Injuſtice of theſe Sentences, which were pronounced when there was no Act, or Law, to countenance them: And, beſides, we meet with an Act afterwards, in this very Reign, *viz.* 21 *Richard* II. *Cap.* 12. which declares all the Proceedings againſt the ſaid Miniſters, and others, in the 11th Year of the ſaid King, to be illegal and unjuſt, and reverſes the ſeveral Judgments given againſt them; and declares further, that the Judges, who had anſwered the Queries put to them at *Nottingham*, had given their Anſwers as good and lawful liege People of the King ought to do; and *that the ſaid Parliament holden in the 11th Year of this King, ſhould be clearly annulled, and holden for none, as a Thing made without Authority, and againſt the Will and Liberty of the King, and the Right of his Crown.*

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And Reſtitution was ordered to be made to thoſe, that were then living, who had ſuffered by thoſe unjuſt Sentences, and to the Heirs of thoſe that were dead.

It is obſervable the Compiler of this Volume of State Trials, *takes no Manner of Notice of this Act:* But if no ſuch Act had ever been made, all that have any Knowledge in parliamentary Affairs, muſt admit, that the Lords cannot impeach their own Members, much leſs Commoners; and that there are but two Ways ſuch Cauſes can come before them, *viz.* either by the Preſentment of the Grand Jury of the County where the Facts were committed, or by an Impeachment of the Commons; unleſs we reſort to that extraordinary Courſe, an Act of Attainder, which is uſually an Act of Parliament, to deſtroy ſome Perſon who has not offended againſt any Law in being.

Proceedings againſt Maſter WILLIAM THORPE, Prieſt, for *Hereſy*, before Doctor *Thomas Arundel*, Archbiſhop of *Canterbury* and Lord Chancellor of *England*, *July* 3. 1407. 8 *Henry* IV.

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1407 8 Hen. 4.

Thorpe *proſecuted for Hereſy.*

The Charge.

THE Charge exhibited againſt the ſaid *William Thorpe* was, That in a Sermon preached at *Shrewsbury* he had declared, *Firſt*, That the Sacrament of the Altar after Conſecration was material Bread and Wine: *Secondly*, That Images ought not to be worſhipped: *Thirdly*, That Men ought not to go on Pilgrimages: *Fourthly*, That Prieſts have no Title to Tythes; and, *Fifthly*, That it is not lawful to ſwear in any Caſe.

The Evidence.

The Evidence of the Priſoner's preaching theſe Doctrines, was a Certificate under the Seal of the Bailiff of *Shrewsbury*.

His Defence.

To which he anſwered, That he never preached or taught theſe Doctrines openly or privately. But being examined, particularly by the Archbiſhop, as to theſe Points, he did declare, That he held the Bread after Conſecration ſtill remained Bread: That no body ought to worſhip or kneel before an Image; and that no Image ought to be made of God the Father, who was a moſt wonderful and incomprehenſible Spirit: That Pilgrimages, in which People waſted their Subſtance in Taverns and Inns, and upon lewd Women, could not be pleaſing to God: That neither Chriſt or his Apoſtles took Tythes, or commanded the People to pay any: That Pope *Gregory* X. was the firſt, who ordered Tythes to be given to Prieſts; And that, whatever Dignity or Order any Prieſt was of, if he did not imitate *Chriſt* in wilful Poverty, and other heavenly Virtues, he was a Prieſt but in Name: That whatever a Prieſt took of the People, whether Tythe or Offering, he ought to have no more than his bare Living, and diſpenſe the Reſidue among the Poor of his Pariſh. But as to the laſt Article of the Charge, he abſolutely denied it, acknowledging, that it was lawful to take an Oath before a Magiſtrate for the determining of Controverſies.

Adviſed to ſubmit.

The Archbiſhop hereupon adviſed the Priſoner to ſubmit himſelf to the holy Church, and to renounce his Errors; and, on his Refuſal, threatned to lay him in Irons: And if that did not reclaim him, he ſhould be condemned as an obſtinate Heretick, and delivered over to the

1407. 8 Hen. 4.

Threatned to be burnt.

the Civil Power to be burnt, as *Soutre* had been a little before for the like Hereſies. What became of the Priſoner afterwards does not appear; but moſt probably he died in Priſon.

Remarks on the Proceedings againſt Thorpe.

This Proceeding is very imperfectly tranſmitted to us; but the Compiler of the firſt Volumes of *State Trials* thought fit, however, to publiſh it, that the preſent Generation might have ſome Notion of what was deemed Hereſy in thoſe Days, and of the Manner of proſecuting thoſe who were charged with it; which was, by ſummoning the Perſon accuſed to appear in the Court of the Archbiſhop or Biſhop of the Dioceſe, who were Judges of theſe Offences, and had Priſons in their Palaces, where Hereticks, or *Lollards*, (as they were called) were kept. And a Charge being exhibited againſt the Priſoner in the Biſhop's Court, and Proof made of it by Depoſitions, or otherwiſe, he was firſt dealt with in a friendly Manner to renounce his Errors; which if he refuſed, he was laid in heavy Irons, uſed hardly, and ſometimes put to the Torture; and if he could not be reclaimed by any of theſe Means, the Biſhop condemned him as an obſtinate Heretick, and delivered him to the Civil Magiſtrate to be burnt. But there is ſcarce any Inſtance of burning an Heretick that offered to renounce his Errors, unleſs he relapſed after a Recantation.

1407. 8 Hen. 4.

1413. 1 Henry 5.

Sir John Oldcaſtle *proſecuted for Hereſy.*

Proceedings againſt Sir JOHN OLDCASTLE, Lord *Cobham*, for *Hereſy*, before Doctor *Thomas Arundel* Archbiſhop of *Canterbury*, *Richard* Biſhop of *London*, *Henry* Biſhop of *Wincheſter*, *Benedict* Biſhop of *Bangor*, and ſeveral other reverend Doctors aſſociated with him, *Sept.* 23, *&c.* 1413. 1 *Hen.* V.

1413. 1 Hen. 5.

Preſented by the Convocation.

SIR *John Oldcaſtle* had been preſented by the Clergy of the Province of *Canterbury*, aſſembled in Convocation, as the great Supporter and Encourager of ſeveral Hereſies, particularly with maintaining, 1. That in the Sacrament of the Altar, the Elements, after Conſecration by a Prieſt, ſtill remained Bread and Wine: 2. That Confeſſion to a Prieſt was not neceſſary: 3. That Images, or the Croſs, ought not to be worſhipped: 4. That the Pope, with the Biſhops and Friars, conſtituted a complete Antichriſt: and, 5. That it was not neceſſary to go on Pilgrimages.

The Charge.

Excommunicated for Contumacy.

This Nobleman had been cited by the Archbiſhop to appear, and anſwer to theſe Articles; and for his Contumacy, in not appearing, ſtood excommunicated. However, depending on the King's Favour and Protection, he did not abſcond, but remained ſtill about the Court; till at length the Biſhops and Clergy obtained an Order from the King to apprehend Sir *John* and carry him to the *Tower*.

He is taken, and avows his Principles.

On the 23d of *September* Sir *John* was brought by the Lieutenant of the Tower, before the Archbiſhop and his Aſſociates, at the Chapter-Houſe of St. *Pauls*; when the Court let the Priſoner know, that, notwithſtanding, he ſtood excommunicated, he might be abſolved and admitted to a Trial, on making his Submiſſion: But Sir *John* boldly avowed all the Doctrines he was accuſed of maintaining; and applying himſelf to the People, declared, that thoſe who ſat in Judgment on him would ſeduce them, and lead them all to Hell.

Adjudged an Heretick.

The Court was ſo incenſed at this Inſult, that Sentence was pronounced againſt Sir *John* as an obſtinate Heretick and Apoſtate; and he was delivered over to the ſecular Arm to be burnt; and a Writ iſſued accordingly for his Execution.

He eſcapes out of the Tower.

The Priſoner afterwards eſcaping out of the *Tower*, his Enemies ſuggeſted that he was not only an Heretick, but a Rebel and a Traitor to the Government, and had appointed the *Lollards* to aſſemble in St. *Giles*'s *Fields* on a certain Night, in order to an Inſurrection, which the poor Proteſtants, or *Wickliffites*, had given ſome Colour to, by aſſembling for their Devotions in the Night-Time in St. *Giles*'s Woods. The King being perſuaded to come thither in Perſon with a Body of his Troops, on a Night when it was known they would aſſemble there, apprehended about fourſcore of the *Lollards* in Arms; among whom was Sir *Roger Acton*, a Knight of ſome Reputation; which confirmed the King in the Belief that an Inſurrection was intended; and Sir *Roger*, with ſeveral more of the Priſoners, were tried, condemned, and executed. Though it did not appear that Sir *John Oldcaſtle* was at this Meeting in St. *Giles*'s *Fields*, he was outlawed for High Treaſon, as a Promoter of that Rebellion, as it was called, and taking Refuge in the Mountains of *Wales*, defended himſelf againſt all the Force and Stratagems of his Perſecutors, for three Years, and upwards; and might have remained there much longer, poſſibly, if he had not given the Clergy freſh Provocation, by defacing the Pictures and Images of the Saints wherever he came: Of which Complaint being made in a Parliament held by the Duke of *Bedford*, Regent of the Kingdom during the King's Abſence in *France*, *Anno* 1417. freſh Forces were ſent down againſt Sir *John*, and a Reward offered to any Perſon that ſhould take him. Whereupon the Lord *Powis* ſurrounded the Lord *Cobham* and his Friends; and after a deſperate Engagement, in which many were killed on both Sides, the Lord *Cobham* was made Priſoner. This Service was then thought of ſuch Importance, that the Lord *Powis* received the Thanks of the Parliament for it; and Sir *John*, according to our Hiſtorians, being brought before the Houſe of Lords, was ordered to be executed both as a Traitor, and an Heretick. In purſuance whereof it is ſaid he was hanged by the Middle in an Iron Chain, and burnt as an He-

The Lollard's *ſurprized in* St. Giles's Fields.

Sir John Oldcaſtle *concealed in the Mountains of* Wales.

He is taken.

and executed as a Traitor and Heretick.

1413 1 Hen. 5.

retick under a new Gallows erected at St. *Giles*'s for that Purpoſe; and while his Enemies curſed and reviled him, and ordered the People not to pity, or pray for him, he gloried in his Sufferings, and was not at all diſmayed at the complicated Execution.

Remarks on the Proceedings againſt Sir John Oldcaſtle.

The Proceedings againſt this noble Lord alſo are very imperfect; but they are the beſt the Compiler of the *State Trials* was able to procure. And in a Work of this Nature, he could not omit mentioning the Bravery and Sufferings of this Proteſtant Hero, who, in defence of Truth, defied all the Powers of Bigotry, and Superſtition; and for many Years skreened and ſupported the Diſciples of theſe Proteſtant Doctrines, againſt the Rage and Malice of their Adverſaries: And he might probably have brought about a Reformation, even in thoſe early Days, if the King, who was then engaged in a War with *France*, had not been in a manner compelled to ſubmit to the Dictates of the Popiſh Clergy, who ſupported him in that Enterprize, and indeed maintained him on the Throne, to which he had but a dubious Title. 1413. 1. Hen. 5.

I muſt confeſs, I am not ſatisfied with the Account our Hiſtorians give us of the Execution of this great Man. Methinks he ſhould either have been burnt as an Heretick, or hanged and quartered as a Traitor. How both Sentences were brought into one, is not eaſy to be conceived; or what Authority could pronounce ſuch a Sentence. Certain it is, there is no Inſtance of ſuch another Execution before or ſince: Beſides, neither the Sentence for Hereſy or Treaſon authorizes the Executioner to hang up the Priſoner by the Middle. Nothing ſhort of an Act of Parliament could appoint ſuch an Execution; and I do not find it pretended that any ſuch Act was ever made.

The Trial of Sir THOMAS MORE, for *High-Treaſon*, before the Duke of *Norfolk*, and other Commiſſioners of *Oyer* and *Terminer*, the 7th of *May*, 1535. 26 *Henry* VIII.

1535. 26 Hen. 8.

1535. 26 Hen. 8.

Sir Thomas More's *Trial for High-Treaſon.*

The Charge

THE Charge contained in the Indictment was, 1. That the Priſoner had ſtubbornly oppoſed the King's ſecond Marriage: 2. That he maliciouſly refuſed to declare his Opinion of the Act of Supremacy: 3. That he endeavoured to evade the Force of that Statute, and adviſed Biſhop *Fiſher* by his Letters, not to ſubmit to it; and, 4. That upon his Examination in the *Tower*, it being demanded, if he approved the Act of Supremacy, he anſwered, *That the Queſtion was like a two-edged Sword; if he anſwered one way, it would deſtroy his Body; and if the other way, his Soul*; and theſe were laid to be Open or Overt-Acts of the Treaſon of his Heart.

The Evidence.

As to the two firſt Articles, he did not deny that he adviſed the King againſt his ſecond Marriage, or, that he declined giving his Opinion concerning the Act of Supremacy; and his Letters to *Fiſher* were ſaid to prove the third, but they were not produced: *Rich*, the King's Solicitor, gave Evidence of the fourth, concerning his Anſwer on his Examination in the *Tower*.

His Defence.

Sir Thomas ſaid in his Defence, That he had no Malice or Treaſon in his Heart, when he adviſed the King againſt his ſecond Marriage, but gave his Opinion according to his Conſcience and his Duty, when his Majeſty required it; and that, if he had refuſed to deliver his Opinion, his Majeſty might juſtly have reſented it: 2. As to the ſecond Charge, he thought Silence was no Sign of the Malice of his Heart; for, according to the Civilians, he who held his Peace ſeemed to conſent, declaring, he had never caſt any Reflection on the Act before any Man: 3. As to the third, which charges him with maliciouſly adviſing *Fiſher* not to comply with the Act, he deſired his Letters, that were ſaid to prove it, might be produced, and he was confident they would acquit him of ever giving ſuch Advice: 4. And as to the fourth Article, the Words were no Reflection on the Act, if he had ſpoken them; but he had never ſaid any Thing like them, excepting to the Evidence of *Rich* the Solicitor, on whoſe Teſtimony he was charged with them; and appealing to the Memory of the Lords who were preſent at that Examination, They all declared, *They heard no ſuch Words.*

He is convicted.

The Jury, however, was ſo managed, that within a quarter of an Hour after they were gone out, they returned with their Verdict, *That the Priſoner was* GUILTY *of High Treaſon.*

The Court demanding of Sir *Thomas*, What he had to ſay, why Judgment ſhould not be pronounced againſt him, he only obſerved, That an Act of Parliament could not give the King the Supremacy of the Church, of which *England* was but a Part; and further, that none but Heaven could confer that Supremacy on any Perſon: After which Sentence was pronounced on him as a Traitor; though all except the Beheading, was pardoned, on account of the Priſoner's having borne the Office of Lord Chancellor.

His Execution.

He was ordered to be executed on the ſixth of *July*, about a Month after his Trial. He preſerved his uſual facetious Temper to the laſt; for obſerving the Stairs of the Scaffold very weak, *he deſired a Friend to lend him a Hand to get up; but when I come down*, (ſays he) *let me ſhift for my ſelf.* And when the Executioner, as uſual, asked him Forgiveneſs, *Friend* (ſays Sir *Thomas*) *you will get but little Credit in cutting off my Head, my Neck is ſo ſhort.* Then *he deſired the Executioner's Leave to lay his Beard aſide, for that had committed no Treaſon.*

Remarks on the Trial and Execution of Sir Thomas More.

It is not eaſy to conceive what there was in this Charge, if it had been all proved, that could amount to High Treaſon, or even to a Miſdemeanor; unleſs it be criminal not to think always as the King thinks. Very precarious

was

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was the Life of a Subject in this Reign. Whatever the Court were pleaſed to denominate Treaſon, was adjudged Treaſon; and whoever the Miniſtry thought fit to accuſe, were found guilty. No Jury, or Court of Juſtice, durſt refuſe to convict any Man the King intimated he would have condemned to Death: And Parliaments met only to execute the King's Decrees. We may therefore look upon this Reign of *Henry* VIII. to be the moſt tyrannical, arbitrary, and cruel, that is to be met with in our Annals. From this Proſecution of Sir *Thomas Moore*, it appears that neither Virtue, Parts, Learning, or even Innocence, and the moſt inoffenſive Behaviour, were any Protection. This great Man, who had arrived to a good old Age, was not ſuffered to go to the Grave in the natural and ordinary way. His ſteady and perſevering Virtue was a Reproach to the Tyrant, who ſeems determined to ſuffer no Man to live that would not fall down and worſhip him, and Change his Creed as often as He changed his Mind.

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Sir *Thomas* is ſometimes cenſured for the Lightneſs of his Expreſſions at the Hour of Death; but to me it only ſhews his Innocence, and that he conſidered this but as the Paſſage to a better State, which made him more than uſually gay, at the Approach of his Execution; and as to his ſaying *His Beard had committed no Treaſon*, he certainly intended to intimate thereby, that his whole Perſon was equally innocent, and that nothing, how inoffenſive ſoever, could eſcape the Rage and Fury of that Adminiſtration.

1549. 2 & 3 Edw. 6.

The Attainder of THOMAS Lord SEYMOUR, Baron of *Sudley*, of High-Treaſon in Parliament, *Feb.* 25. 1549, 2 & 3 *Edward* VI.

1549. 2 & 3 Edw. 6.

The Attainder of the Lord Seymour.

THE Protector, *Edward Seymour*, Duke of *Somerſet* on the 25th of *February*, 1549. cauſed the following 33 Articles, to be exhibited againſt his younger Brother, the Lord *Seymour*, then Lord High Admiral of *England*, before the Privy Council.

The Charge exhibited againſt him, before the Privy Council.

1. The firſt Article recited, That, whereas the Duke of *Somerſet* had been made Governor of the King's Perſon, and Protector of the Realm, to which the ſaid Lord *Seymour* had conſented in Writing, he had, notwithſtanding, attempted to undo this Order, and endeavoured to obtain the Government of the King's Perſon, to the great Danger of his Majeſty, and the Subverſion of the State.

2. That he corrupted divers of the Privy Chamber, to perſuade the King to agree to his perilous purpoſes.

3. That he indicted a Letter, for the King, to copy, to the Parliament, which he determined to have carried to the Houſe of Commons himſelf; and, with the Aſſiſtance of his Party there, which he had already prepared, to have cauſed a Diſturbance.

4. That he had laboured to bring over ſeveral of the Council, and the Nobility, to his Party, in order to procure an Alteration in the Adminiſtration.

5. That he had ſaid, he would make the blackeſt Parliament, that ever was in *England*.

6. That being ſent for, to anſwer ſuch Things as were laid to his Charge (*by the Council, I preſume*) he refuſed to come.

7. That, notwithſtanding the Clemency that had been ſhewn him, he ſtill continued his miſchievous Purpoſes, and continually laboured to make the King diſlike the Lord Protector's Adminiſtration.

8. That the King not being of Age to direct his Affairs, he had endeavoured to perſuade his Highneſs to take the Government upon himſelf.

9. That he intended, and attempted, to get the King's Perſon into his Cuſtody.

10. That he had corrupted with Money certain of the Privy Chamber, to perſuade the King to have recourſe to him, and no Body elſe, for what he wanted, that he might have the Management of his Highneſs.

11. That he had promiſed the Marriage of the King at his Will and Pleaſure.

12. That he laboured to confederate himſelf with ſome of the diſaffected Nobility, and others among them, to depart to their ſeveral Counties and ſtrengthen themſelves, that he might have always a Faction in Readineſs for his Purpoſes.

13. That he had endeavoured to ſtrengthen himſelf, by creating Factions among the Nobility.

14. That he had employed Perſons to ingratiate themſelves with the Yeomen, and leading Commoners of certain Counties, that he might have the Multitude at his Devotion.

15. That he had alſo acquired the Stewardſhips of Noblemen's Manors, and Lands, to make his Party the ſtronger.

16. That he hired, and retained Abundance of young Gentlemen, and Yeomen to his Service, more than the Law allowed, to ſtrengthen himſelf in his evil Deſigns.

17. That he had uſed ſuch Application, and Diligence, in this Matter, that he could raiſe ten thouſand Men of his own Adherents, beſides his Friends.

18. That he had coined Money enough to maintain the ſaid ten thouſand Men for a Month, and given Orders to have the ſaid Money in Readineſs.

19. That he had attempted to marry the Princeſs *Elizabeth*, the King's Siſter, before his Marriage with the Queen: That during his Marriage, he continued to make Court to the Princeſs; and after the Queen, his Wife was dead, attempted to marry the Princeſs *Elizabeth* again.

20. That he married the late Queen Dowager ſo ſoon after the late King's Death, that if ſhe had been with Child, it would have been doubtful, whether the Iſſue had been the King's or his own.

21. That he firſt married the late Queen privately, and concealed it; and then obtained

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ed a Letter from the young King, requiring the Queen to marry him; and likewiſe he prevailed with the Protector to ſpeak to the Queen in his behalf; and, it was to be feared, he intended to uſe the like Practice in marrying the Princeſs *Elizabeth*.

22. That he interrupted the King's Affairs in Parliament, and elſewhere, and withdrew himſelf from his Service; and that all the Practices, and Preparations, abovementioned, were intended to make his way to the Throne by ſome heinous Enterprize againſt his Majeſty's Perſon.

23. That he had gotton Poſſeſſion of the ſtrong Iſles of *Sicily*, and laboured to obtain *Londay*; and, confederating with Sir *William Sharrington*, had gotten the Mint of *Briſtol* into his Hands; and with the Aid of that Money, and the Strength of thoſe Places, and the Shipping he was Maſter of, he propoſed to defend himſelf, if his traiterous Purpoſes did not ſucceed, and he ſhould be called to account for them.

24. That, knowing Sir *William Sharrington* had committed Treaſon, and defrauded the King, he did aid and aſſiſt him, and bear him out in it.

25. That, whereas he owed Sir *Willam Sharrington* Money, that he might have a Colour to protect the ſaid *Sharrington*, and defraud the King, he pretended *Sharrington* was indebted 2800 *l.* to him.

26. That he extorted Money from Ships bound to foreign Countries, to the Diſcouragement of Traffick, &c.

27. That he enriched himſelf by Goods that had been piratically taken, and diſtributed them among his Servants and Friends, refuſing to reſtore them to the Owners; whereby foreign Powers had been diſguſted.

28. That he had taken away the Prizes from thoſe who had taken Pirate Ships, and impriſoned the Captors.

29. That he had not only ſet Pirates at Liberty, but ſhared the Goods they had taken from honeſt Merchants with them, and was himſelf the chief Pirate.

30. That, when the Protector and Council (of which he was one) had given publick Orders for the Reſtoration of Goods piratically taken, he (the Admiral) hath ſent private Letters that ſuch Orders ſhould not be obeyed.

31. That, when foreign Merchants have had their Ships damaged upon the Coaſt (but not wrecked) and the Protector and Council have ordered their Ships and Goods to be preſerved, and reſtored to the Owners, he (the Admiral) hath given contrary Orders, and defrauded the Owners of them.

32. That he had not only revealed the King's Councils, but had prevented the Execution of Orders of Council that he himſelf had conſented to.

33. That in the County of *Denbigh*, his Stewards and Officers had amaſſed great Quantities of Proviſion, and vaſt Sums of Money; and given out that the King was dead, to the Amazement of the People, who expected ſome Diſturbance, if it had not been prevented by apprehending him.

Lord Seymour *examined by the Council on theſe Articles.*

The Lords of the Privy Council went to the *Tower*, to examine the Admiral upon theſe Articles; but he told them, he expected an open Trial, and that his Accuſers ſhould be brought Face to Face; and, being ſtill preſſed to anſwer them, he ſaid, If they would leave the Articles with him, he would conſider them, otherwiſe he would not anſwer them. This being refuſed, it was reſolved in Council to acquaint the King with the State of the Caſe, and know if he would have the Admiral proſecuted. To which the King, as he had been directed, anſwered, He perceived that treaſonable Matters were laid to the Charge of his Uncle the Admiral, and he thought it reaſonable they ſhould proceed againſt him as they deſired.

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Examined by a Committee of both Houſes.

It being afterwards moved in Parliament, to bring in a Bill of Attainder againſt the Admiral, it was reſolved, That a Committee of both Houſes ſhould firſt attend the Admiral in the *Tower*, and require his Anſwer to the ſaid Articles.

Accordingly the Lord Chancellor, the Earls of *Shrewsbury*, *Warwick*, and *Southampton*; Sir *John Baker*, Speaker of the Commons; Sir *Thomas Cheney*, and Sir *Anthony Denny*, were ſent to examine him; and, after a great deal of Perſuaſion, the Admiral anſwered to this Effect: That he had ſaid, he would be glad to have the Cuſtody, or Government, of the King's Perſon; but it was only in Mirth. He owned further, that he had ſearched for Precedents, and found, in the Minority of *Hen.* VI. one of his Uncles was Protector, he had Thoughts of moving it to the Parliament, to be his Majeſty's Governor; but, it having been obſerved to him, that he had conſented his Brother ſhould be both Protector and Governor, he ſaid, he deſiſted from that Purſuit.

His Anſwer to both the Articles.

He acknowledged alſo, that he had ſent Money to the King ſeveral Times, at his Majeſty's Requeſt, and diſtributed ſeveral Sums to thoſe about him; particularly to Mr. *Cheek* and Mr. *Fowler*; but would give no further Anſwer, or ſubſcribe what he had ſaid; whereupon a Bill of Attainder was brought in againſt him, the 25th of *February*, read three Times in three Days, and paſſed the Houſe of Peers, who on the 27th ſent it down to the Commons, acquainting that Houſe, that if they thought fit, the Noblemen who had given Evidence againſt the Admiral, in the Houſe of Peers, ſhould give the ſame Evidence before the Commons.

A Bill of Attainder brought in againſt him

But the Lower Houſe, it ſeems, were not in ſuch Haſte to paſs the Bill as the Lords had been. They thought it highly reaſonable the Admiral ſhould be heard in his Defence; with which they acquainted the Lords: Whereupon a Meſſage was procured from the King, to inform the Commons, that the Admiral's Preſence was not neceſſary; and they were prevailed on by the Court, to paſs the Bill, without hearing of him, on the 5th of *March*; and it afterwards received the Royal Aſſent.

It paſſes, without hearing the Lord Seymour.

In the Preamble of the ſaid Act, was recited the Subſtance of the thirty three Articles abovementioned; and it was enacted, *That the ſaid Sir* Thomas Seymour, *Kt. Lord* Seymour *of* Sudley, *High Admiral of* England, *for the ſaid traiterous Offences and Deeds, ſhould, by the Authority of that Parliament, be adjudged and attainted of Treaſon, and ſuffer and forfeit as a Traitor.*

The Tenour of the Act.

The

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The Protector and Council preſs his Majeſty for his Execution.

The Warrant ſigned.

The Council, on the 10th of *March*, with the Protector at their Head, preſſed his Majeſty that Juſtice might be done upon the Admiral. The young King, as he had been taught, thanked them for their great Care of his Safety, and directed them to proceed to Execution; whereupon a Warrant was ſigned by the Council, on the 17th of *March*, for the Execution of the Admiral, the *Wedneſday* following; the Protector's Hand being firſt ſet to the Warrant.

Latimer's *Invectives againſt Lord* Seymour.

The Editor of this Proceeding concludes it with ſome Paſſages out of *Hugh Latimer*'s Sermons, containing moſt vile Invectives againſt the Admiral, with Abundance of ill-natured Suggeſtions, to induce the People to believe, he was damned.

His Behaviour at his Execution.

The Admiral being brought to the Scaffold, erected on *Tower-Hill*, on the 20th of *March*, appeared not at all terrified at the near Approach of Death; but making a ſhort Speech to the People, who were charmed with his graceful Preſence, and intrepid Behaviour, he took that Opportunity to aſſure them, *That he had neither committed, or intended, any Treaſon againſt the King or Nation*; and then ſubmitting to the Block, his Head was ſevered from his Body.

Remarks on the Attainder of Thomas *Lord* Seymour.

To underſtand the Reaſon of this Proſecution of the Lord *Seymour*, it is neceſſary to look back to the Beginning of this Reign. It is ſaid, he firſt diſcovered himſelf diſcontented on the opening of the late King's Will, (*Hen.* VIII.) who had appointed his Brother and ſeveral others Regents of the Kingdom, during the Minority of his Son; while he, (the Lord *Seymour*) who was alſo Uncle to the Infant King, was left out of the Number, and had only a Place aſſigned him in the Privy-Council.

However, being a fine Gentleman, of excellent natural Parts, and remarkable for the Beauty of his Perſon, he hoped to make himſelf ſome Satisfaction for this Slight, by matching with the Princeſs *Elizabeth*, Daughter to the laſt, and Siſter to the preſent King; but, not ſucceeding in his Addreſſes here, he made Court to Queen *Katherine*, Dowager of the late King, and carried her very ſecretly, and ſo ſuddenly, that it was made a Doubt, whether ſhe was not then with Child by the King, her late Husband. She was ſo much in haſte to poſſeſs this fine Gentleman, it ſeems, that ſhe did not obſerve the Rules of Decency: However, he managed Matters ſo as to get both the King's, and his Brother the Protector's Conſent to the Marriage, after it was done, and then he declar'd it publickly; and now, looking upon himſelf to be upon an equal Foot with his Brother, he murmured at the Duke's ingroſſing the Adminiſtration of the Government, and the Care of the King's Perſon to himſelf; ſuggeſting, that the Protector ought to be content with the Adminiſtration of the Government, and leave the Care of the King's Perſon to him, his other Uncle, as was practiſed during the Minority of *Henry* VI. However his Brother having diſcovered his Views, and checked him for them, he ſeemed to wave the Purſuit for ſome Time; but the Protector marching with the Army into *Scotland*, the Admiral took that Opportunity to gain over the young King to his Intereſt, and obtained a Patent to enlarge his Authority of Lord High Admiral, with an Addition to his Pay; of which the Protector receiving Intelligence, haſtened back from *Scotland*; but the Admiral was now ſo much in the King's Favour, that he refuſed to deſiſt from his Pretenſions, and even procured a Meſſage, in Writing, from his Majeſty to the Houſe of Commons, expreſſing his Deſire, that he (the Admiral) might be conſtituted Governor of his Perſon; and, the Council ſending to diſuade him from delivering the Meſſage, he was ſo far from taking their Advice, that he threatened ſeveral of them, for interpoſing in the Matter: Whereupon an Order of Council was iſſued, for apprehending him; and he was given to underſtand, if he did not ſubmit himſelf, he would be proſecuted for High Treaſon; which had ſuch an Effect, that he feigned a Reconciliation with his Brother, the Protector, and was diſcharged. But having buried the Queen his Wife, and making Court again to the Princeſs *Elizabeth*, and at the ſame time reviving his Pretenſions to the Government of the King's Perſon; the Protector, who could bear no Rival in Power, determined to cut him off, by an Act of Attainder, without allowing him the Benefit of a Trial; which we ſee he found Means to accompliſh.

It, appears, by the Articles preferred againſt the Admiral, before the Privy Council, that his principal Crime was, his attempting to ſhare the Adminiſtration with the Protector. Indeed his great Enemy, his Brother, ſuggeſted in ſome of the Articles, that his attempting to get the Government of the King's Perſon, was with a View of uſurping his Throne, and that he had made a Proviſion of Forces and Money for that End; but from other Articles it appears, that he propoſed no more than to gain the Government of the King's Perſon by the Conſent and Concurrence of his Majeſty, and the Parliament; which had been a more legal Way of arriving at that Honour, than his Brother, the Protector, had taken, to acquire the ſole Adminiſtration of Affairs of State. The Protector had no more than a Grant, of his own framing, from an Infant King, to inveſt him with the executive Power; whereas the Admiral evidently propoſed to have had an Act of Parliament to eſtabliſh him the King's Governor; and it is a little amazing, that the Protector did not procure an Act of Parliament to ſupport his Authority, at the Time he procured himſelf to be declared Protector: For, as the late King had appointed certain Noblemen to ſhare the Regency with him, nothing leſs than an Act of Parliament could legally ſuperſede and invalidate that Will, and transfer the Adminiſtration to the Protector. And, admitting that the King's Uncles had a Right to govern the State, during the Minority of their Royal Nephew, (from that Precedent in the Reign of *Henry* VI. and ſome others) which the late King's Will could not alter; yet thoſe Precedents ſhew, that the Uncles of the Infant King divided the Executive Power amongſt them. One was Regent of *England*, another of *France*, and a third Governor of the King's Perſon. There was no

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Precedent of one Uncle's engroſſing the whole Adminiſtration, to the Excluſion of the reſt. The Admiral therefore (ſuppoſing the late King's Will did not ſtand in his Way) had great Reaſon to demand the Government of the King, while his Brother held the Regency; and, as he attempted to inveſt himſelf in this Dignity with his Majeſty's Conſent, and in a Parliamentary Way, ſurely there could be no Treaſon in it: And it is evident, the true Reaſon, the Protector would not ſuffer the Admiral to be brought to an open Trial, or heard in Parliament, was, leaſt his Claim ſhould appear too ſpecious, or his own Uſurpation of the Royal Power too notorious.

He could ſuggeſt what Crimes he pleaſed againſt the Admiral, in either Houſe; while that unfortunate Nobleman was not allowed to examine the Proofs he brought: He could make uſe of the Royal Name to ſupport the defective Evidence, and in a Manner force the Odious Bill through both Houſes, which he had Reaſon to apprehend could not have been carried, if he had ſuffered Matters to be fully diſcuſſed. There were many, probably, that would have been aſhamed of giving their Voices for a Bill of Attainder, if it had appeared upon what trifling Suggeſtions, and ſlight Evidence, it was founded, who were willing to run blindfold into it; with a View, perhaps, of ruining the Protector, as well as his Brother. Moſt of the Regents, appointed by the late King's Will, were incenſed to the laſt Degree, to ſee the Protector uſurp the ſole Government of the State; and they might look upon it as the readieſt Way to deſtroy him, and recover their former Authority, to aſſiſt him firſt, in ruining his Brother. It is highly probable, that if the two Brothers had united their Intereſts, they would have been able to have borne down all Oppoſition. But when the Protector had ſo far contributed to the weakning the Intereſt of his Family, by cutting off his Brother, no Wonder his Enemies were inſpired with Thoughts of depriving him of that Authority he had uſurped. How ſuddenly they effected it, after the Death of the Admiral, will be ſhewn in the following Proceedings.

But, before I diſmiſs this unrighteous and arbitrary Attainder, I cannot but obſerve, with what indecent Zeal the Protector, haſtened the paſſing, as well as the Execution, of it. We find him, firſt making uſe of the Name and, Authority of his Royal Nephew, the Infant King, to prevent the Admiral's being heard in his Defence. We ſee him, afterwards, at the Head of the Council, petitioning his Majeſty that Juſtice (as he called the moſt arbitrary and unjuſt Proceeding that ever was) might be done upon his Brother; and laſtly, we ſee his Hand firſt ſet to the Warrant, for his Execution, which one would have thought, he ſhould have avoided, how much ſoever he had forwarded the barbarous Sentence behind the Curtain. There is no doubt to be made, as has been obſerved already, that this unnatural Proſecution contributed more Ways than one to that Deſtruction which ſo ſuddenly overtook him.

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It has been ſuggeſted, by ſome Hiſtorians, that this Miſunderſtanding, between the two Brothers, aroſe from a Diſpute of their Wives, about Place: But as one very well obſerves, there could be no Colour for ſuch a Diſpute. The Admiral's Wife was Queen; and the Wife of no other Subject, how great ſoever, could have any Pretence to diſpute the Precedence with her. Though there is no doubt, but the Admiral's marrying the Dowager Queen, and making Court to the Princeſs *Elizabeth*, created in the Protector a Jealouſy of his ambitious Views; and induced him to apprehend, that he might one Day be eclipſed by the Figure his Brother would make. I am ſatisfied, the Protector's Concern, leſt his own Power ſhould ſuffer ſome Diminution, was the grand Spring that gave Motion to this Proſecution, and not his Care for the King's Safety; though he made that the chiefeſt Pretence. And thus, we ſee, whenever the exorbitant Power of a great Miniſter is attacked, he conſtantly flies for Refuge to his abuſed Maſter, and endeavours to perſuade, both him and the World, that thoſe who cenſure his Conduct, are, indeed, Enemies to the Prince he ſerves; and that he ſuffers only for his Fidelity to his Sovereign.

Proceedings againſt EDWARD Duke of *Somerſet*, for High-Treaſon, and other Miſdemeanors, *Jan.* 1550. 3 & 4 *Edward* VI.

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1550. 3 and 4 Edw. 6.

Proſecution of the Duke of Somerſet. *The Privy Council confederate againſt him.*

PART of the Privy Council, on the 6th of *October*, 1550. ſent to the Lord Mayor and Aldermen of *London*, requiring them not to obey any Letters, or Orders, of the Protector: And receiving Advice, that he had removed the King from *Hampton Court* to the *Caſtle* of *Windſor*, and aſſembled Forces there, they publiſhed a Proclamation, declaring, that the Protector, by his Adminiſtration, had been the Occaſion of the Inſurrections, and Diſturbances, that had lately happened in the Kingdom, and the loſs of ſeveral Places on the Frontiers of *France:* That his Ambition appeared, by the building ſuch magnificent Palaces in the Time of War, and his having no regard to the Advice of Council: That he encouraged the Faction, and Diviſion, amongſt the Nobility, Gentry, and Commonality: That he was unnatural, and ungrateful, and had traiterouſly ſlandered the Council to the King, and did what in him lay, to cauſe Variance between the King and his Nobility; and, laſtly, That he was a Traitor; and therefore they required the Aid of the Nobility, the City, and Commons, to take the King out of his Hands.

Iſſue a Proclamation againſt him.

Signed by the Lord Chancellor *Rich*; the Lord *St. John* Preſident of Council; the Earl of *Warwick* Great Chamberlain; the Marquiſs of *Northampton*; and a Majority of the Council.

The

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He and his Adherents taken into Custody.

The Charge against him.

The Duke afterwards dismissing his Forces, the whole Council assembled at *Windsor*; and, having taken the Duke, and his principal Adherents, into Custody, they caused twenty-nine Articles to be drawn up against him: Wherein they charge, That he, having taken upon him the Office of *Lord Protector*, on Condition he should transact nothing without the Assent of the late King's Executors, assumed the Administration of the Government solely to himself, perverted Justice, subverted the Laws, released Persons imprisoned for Felony and Treason, appointed Generals, and other Officers, treated with Ambassadors, reprehended, and brow-beat the Privy Councillors, for giving the King their Advice, held a Court of Request in his House, and determined Suits relating to Freeholds there: That he disposed of Offices, Bishopricks, and Ecclesiastical Preferments, for Money; made Grants of Leases and Wardships, and alienated the Crown Lands, by his sole Authority: That he encouraged Alchymy, and Multiplication of Metals, and debased the Coin: That he gave out, the Nobility, and Gentry, were the only Cause of Dearth, and issued a Proclamation against the Advice of the Council concerning Enclosures, which occasioned divers Insurrections: That he gave out a Commission to determine Differences concerning Enclosures, Commons, Cottages, *&c.* whereby the Laws were subverted, and a Rebellion ensued: That he suffered Rebels to arm themselves against the Nobility, and Gentry, and did not suppress, but encouraged them; giving out, that the Avarice of the Gentry occasioned the People's Rising; and that it was better for them to die, than perish for Want; and as the Lords were loth to reform Enclosures, the People had good cause to reform them themselves: That he would not suffer the Places belonging to the Crown, in *France*, to be put into a Condition of Defence: That he published seditious Libels, at *Hampton Court*, in order to incite an Insurrection in his Favour: That he declared the Privy-Council to be traitors; and, that the Lords at *London* intended to destroy the King, inciting the King to revenge it: That he had said, divers Times, *the Lords of the Council, at* London, *intended to kill me*; *but, if I die, the King shall die*; *and, if they famish me: they shall famish him:* That he moved the King to go to *Windsor*, whereby his Majesty was not only greatly terrified, but fell dangerously ill: That he armed his Servants, and Dependants, at *Windsor*, and disarmed the King's Servants, and Guards, leaving his Majesty's Person exposed in the Night-Time, while he was strongly guarded himself; and, lastly, that he intended to fly to *Jersey*, or *Wales*, and laid Horses, Men, and a Boat, for that Purpose.

He confesses the Charge, and makes his Submission to the Council.

The Duke, having read, and considered, these Articles, thought fit to confess his Guilt, and make his Submission, in Writing, to the Lords of the Council; but intimated, that he hoped he should have the Benefit of his Majesty's Pardon (then lately passed); and that they would represent to his Majesty, that his Offences proceeded more from Ignorance, Negligence, or Folly, than from any malicious, or evil, Intention, tending to Treason against his Majesty, or the Realm: Begged his Majesty would take Pity upon him, his Wife, and Children; and not deal with him according to the Rigour of the Laws, but after his great Goodness and Clemency.

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Before the Council proceeded further, they deputed four Spiritual, and four Temporal Lords, to examine the Duke in the *Tower*, whether he subscribed that Confession freely: To which the Protector answered, that he voluntarily made that Confession, on his Knees, before the King and Council, and signed it; protesting, that his Offences flowed from Rashness, and Indiscretion, rather than Malice; and that he had no treasonable Design against the King, or his Realms. *So* (says the Editor of this Volume of Trials) *both Houses soon passed the Bill against him, and he was fined by Act of Parliament, entitled,* An Act touching the Fine and Ransom of the Duke of *Somerset*; *that is, for the Punishment of his late Misdemeanors: Whereby he was fined* 2000 l. *a Year of Land, and lost all his Goods and Offices.*

His second Submission.

He is fined, and imprisoned.

But, I must confess, I never could meet with this Act, or the Title of it, in any of our Statute Books, which inclines me to believe this Matter was never brought before the Parliament: Besides, this second Submission, which the Editor has given us, though it be directed to no body, seems, from the Tenor of it, to be designed, either for the Lords of the Council, or the Star-Chamber. Had it been intended for the Parliament, it would, surely, have been addressed to one, or both, of the Houses: But here the prisoner is made to say, *I am full of Heaviness, my very good Lords, to understand my last Letter* (of Submission) *was no better accepted at your Lordships Hands, to whom I am bound, during my Life, for your most gentle and merciful Dealing with me, that it pleased your Goodness to bring my Case to a Fine.* And having represented, that the Fine was greater than his Circumstances would bear, he desires a Mitigation of it: *But, had the Fine been laid by Act of Parliament, what Lords could have mitigated it? He adds,* I submit my self to the King's Majesty, and to your good Lordships, appealing from the Rigour and Extremity of his Majesty's Laws, to his Majesty's great Mercy and Clemency. *Surely he would have said, the Rigour of the* Act, *rather than the Rigour of his Majesty's Laws; if this Fine had been just then inflicted by Act of Parliament.* He concludes, most humbly praying his Majesty's and their Lordships Pardon, on his knees; and that they would impute his Offences to the want of Discretion, trusting they would find him so submissive to *their Honours*, and conformable to *their Lordships* Orders, that he should make amends, and obtain Pardon for his former Folly: And this is dated from the Tower the 2d of February, which is the Day after the Parliament rose; and consequently, neither this nor the former Submission, mentioned in it, were addressed to the Parliament; but the whole Proceeding was certainly before the Council, or Star-Chamber.

This Matter was never brought before the Parliament, as the Editor of this Volume supposes.

He

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He is ſet at Liberty.

He was releaſed out of the *Tower* on the 6th of *February*, firſt giving 10000 *l.* Security, for his good Behaviour, and that he would reſide, either at the King's Palace of *Sheen*, or his own Houſe at *Sion*; and not depart from either of them, unleſs he knew that the King was within four Miles of theſe Places, and then he was to withdraw from thence: Nor was he to come to Council, unleſs called. However, he had the King's Pardon the 16th inſtant, and on the 8th of *April* following, was ſworn, again, of his Majeſty's Privy-Council; and in *June* the beſt Part of his Eſtate was reſtored him by Patent, *ſays the Compiler.*

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He is pardoned, and ſworn of the Privy Council again.

I proceed now to give an account of the ſecond Proſecution of the Duke, in the Year 1551.

1551. 5 Edw. 6.

Trial of the Duke of Somerſet.

The Trial of EDWARD Duke of *Somerſet*, for High-Treaſon and Felony, before the Lord Treaſurer, High Steward, and twenty-ſeven of his Peers, in *Weſtminiſter-Hall, December*, 1. 1551. 5 *Edw.* VI.

1551. 5 Edw. 6.

The Charge againſt him.

THE Indictment was found by a *London* Grand-Jury, on the firſt of *November*, in the Mayoralty of *Richard Dobbes*: And ſet forth, that *Edward* Duke of *Somerſet*, late of *Sion*, in the County of *Middleſex*, at the Pariſh of St. *Andrew*'s *Holbourn*, within the ſaid City of *London*, on the 20th of *April*, then laſt paſt, and divers other Days before and after, did maliciouſly, and traiterouſly, with divers other Perſons, conſpire, compaſs, and imagine to depoſe, and deprive, his Sovereign Lord, King *Edward* VI. of his Royal State, and Dignity; and, without any Authority, to aſſume the ſole Government of his Perſon, and the Adminiſtration of all Affairs of State: And that, to accompliſh his ſaid Treaſons, the ſaid Duke, together with Sir *Michael Stanhope*, Sir *Miles Partridge*, Sir *Thomas Holcroft*, and *Francis Newdigate* Gent. with divers other Perſons, to the Number of an hundred, aſſembled themſelves, in order to take and impriſon the Duke of *Northumberland*, then Earl of *Warwick*, and one of his Majeſty's Privy-Council, againſt the King's Peace, his Crown, and Dignity, and contrary to the Form of the Statutes in that Caſe made and provided: And, further, that the ſaid Duke of *Somerſet*, on the 20th of *May* then laſt paſt, in the Pariſh aforeſaid, and at divers other Times, and Places, did feloniouſly move, and incite, ſeveral of his Majeſty's Subjects, to make an Inſurrection, and Rebellion, and to take, and impriſon, the aforeſaid Duke of *Northumberland*, againſt the King's Peace, *&c.* and contrary to the Form of the ſaid Statute.

Lords commiſſioned to try him.

His Majeſty having commiſſioned the Marquis of *Wincheſter* Lord Treaſurer, to be Lord High Steward, *pro hac vice*, and twenty-ſeven other Peers, for the Trial of the ſaid Duke, his Uncle, *viz.* The Dukes of *Suffolk* and *Northumberland*; the Marquis of *Northampton*; the Earls of *Derby*, *Bedford*, *Huntington*, *Rutland*, *Bath*, *Suſſex*, *Worceſter*, and *Pembroke*; the Lord Viſcount *Hereford*; the Barons *Abergavenny*, *Audley*, *Wharton*, *Evers*, *Latimer*, *Borough*, *Zouch*, *Stafford*, *Wentworth*, *Darcy*, *Sturton*, *Windſor*, *Cromwell*, *Cobham*, and *Bray*.

The Duke was brought before them in *Weſtminiſter-Hall*, to take his Trial on the firſt of *December*; and the King's Council having opened the Evidence againſt him, which conſiſted of ſeveral written Depoſitions theſe were read in Court.

Written Depoſitions read in Evidence.

And firſt, the Depoſition of Sir *Thomas Palmer* was read, importing, that the Duke, being about to take a Journey into the North, propoſed to have raiſed the People, if Sir *William Herbert* had not aſſured him, he ſhould receive no harm; and, that he had contriv'd, to invite the Duke of *Northumberland*, the Marquis of *Northampton*, the Earl of *Pembroke*, and other Lords, to a Supper; and either to have murdered them in the Way, or at the Entertainment. He depoſed alſo, that Sir *Ralph Vane* had 2000 Men in Readineſs; that Sir *Thomas Arundel* was to ſecure the *Tower*; *Partridge* to raiſe *London*, and take the Great Seal; *Seymour* and *Hamond* were to attend him, and all the *Gendarmerie*, or Men at Arms, were to be killed. They were to be attacked by 2000 Men under Sir *Ralph Vane*; by an hundred Horſe of the Duke of *Somerſet*'s, beſides his Friends: After which, the Duke was to proclaim Liberty in the City, in order to raiſe the Apprentices; and if he did not ſucceed, he was to retire to the *Iſle of Wight*, or to *Poole*.

The Earl of *Rutland* depoſed, that the Duke had made a Party, to get himſelf declared Protector in the next Parliament.

Crane confirmed the Depoſition of Sir *Thomas Palmer*; adding that the Lord *Paget*'s Houſe was the Place, where the ſaid Noblemen were to have been invited to an Entertainment, and murdered: And that the Thing had been done; but the Greatneſs of the Enterprize cauſed Delays, as well as ſome Diverſity of Advice.

Hamond depoſed, That the Duke of *Somerſet*'s Chamber at *Greenwich* had been ſtrongly guarded, in the Night, by armed Men.

The Lord *Strange* depoſed, that the Duke deſired him to move the King, to marry his third Daughter, the Lady *Jane*; and to be his Spy about the King, to inform him, when any of the Council ſpoke privately with him, and what they ſaid.

The Duke's Defence.

The Duke ſaid, in his Defence, That he never intended to have raiſed the Northern Parts; or to have killed the Duke of *Northumberland*, or any other Perſon; but only talked of it, without any Intention of doing it: That it was impoſſible, he, with a ſmall Troop, ſhould deſtroy the *Gendarmerie*, who conſiſted of

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of nine hundred Men: That he never deſigned to raiſe any Stirs in *London*, but looked upon it as a Place where he was moſt ſafe: That his having Men about him at *Greenwich*, was with no ill Deſign; nor did he ever make any uſe of them, but ſurrendered himſelf a Priſoner without Reſiſtance: He objected alſo, that the Witneſſes were not brought into Court, Face to Face.

The King's Counſel Reply.

The King's Counſel replied, That his aſſembling Men with an Intent to kill the Duke of *Northumberland*, was Treaſon by the 3d & 4th of *Edw.* VI. *Againſt unlawful Aſſemblies*, which enacts, That if Twelve Perſons ſhould aſſemble to kill a Privy Councillor, and did not diſperſe themſelves upon Proclamation, it ſhould be adjudged High-Treaſon: Or, if twelve ſuch Perſons aſſembled, to commit a Riot, and being warned, did not diſperſe themſelves it was Felony, without Benefit of Clergy, or Sanctuary: That to raiſe *London*, or the Northern Parts, was Treaſon; and to have Men about him, to reſiſt thoſe that came to apprehend him, was Felony: That to aſſault the Lords, and to deviſe their Deaths, was Felony.

The Lords conſider the Evidence.

The Lords being withdrawn, were not ſatisfied with the Evidence of the Duke's Deſign, of raiſing the North, or the City, or of killing the *Gendarmes*: Some of the Lords alſo objected, that the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, who were Parties in the Cauſe, ought not to be of the Number of the Lords Triers; becauſe the Priſoner was principally charged with a Conſpiracy againſt them. To which it was anſwered, that a Peer could not be challenged: On which Point, it ſeems, the Lords were pretty much divided in their Opinions; but in the End, it was agreed, they might ſit in Judgment on him; and, by the Influence of the Duke of *Northumberland*, and the other two, a Majority found the Priſoner guilty of Felony, though they acquitted him of the Treaſon; and hereupon Judgment was given againſt him, that he ſhould be hanged.

He is acquitted of Treaſon: and convicted of Felony.

He confeſſes a Deſign againſt the Duke of Northumberland *&c.*

After the Trial, it is ſaid, the Duke of *Somerſet* acknowledged he had a Deſign againſt the Perſons of the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, and asked their Pardon; and deſired the Lords would become Mediators, for him, to his Majeſty; and that, if the King did not think fit to grant him his Life, he hoped he would have Compaſſion on his Wife and Children. But the Duke could expect to meet with but little Favour from the Court, now the King was ſurrounded by his Mortal Enemies. Their feigned Interceſſions were ſure to be rejected, as they intended they ſhould; and a Warrant was ſigned for the Duke's Execution on the twenty ſecond of *January*.

A Warrant ſigned for his Execution.

His Speech, and Behaviour on the Scaffold.

The Duke being brought to the Scaffold on *Tower-Hill*, on the Day appointed, appeared with a compoſed Countenance; and having firſt kneeled down, and recommended himſelf to God, he made a Speech to the People, telling them, he was brought thither to ſuffer Death, though he never had offended the King, either in Word, or Deed, and had been always faithful and true to the Realm; but, as he was condemned by Law, he acquieſced in it, and thanked God, who had given him that Time of Repentance, when he might have taken him away by a ſudden Death. He rejoiced that he had been inſtrumental in the Reformation of the Church, exhorting the People to embrace the pure Doctrines taught in it, and live accordingly; *Otherwiſe, great Calamities would befal them.* At the ſpeaking which Words an Ear-Witneſs relates (ſays the Editor of this Trial) there was heard a terrible Noiſe, like that of a Storm, or Tempeſt; or rather the blowing up of a Magazine of Gun-Powder: At which the People were ſo terrified, that ſome ran away, tumbling over one another in Heaps; others fainted, and all were amazed; and before they were well recovered from their Conſternation, Sir *Anthony Brown* came riding haſtily towards the Scaffold: Whereupon the People, imagining he had brought a Pardon, ſhouted for Joy, ſo that the Air rung again: But this appearing to be a Miſtake, the Duke went on with his Speech, and ſaid, There is no ſuch Matter, dearly beloved Friends, as you vainly hope: It ſeems good to Almighty God, that I ſhould ſuffer Death; I deſire, therefore, you will all be quiet, and contented with it, and join your Prayers with mine, for the King's Majeſty, unto whom I have always ſhewn myſelf a moſt faithful and true Subject, and have always ſought the Welfare of the Kingdom. All the People anſwered, *It was moſt true.*

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Then he went on, and ſaid, he wiſhed his Majeſty perpetual Health, and Felicity, and that his Councillors might have Grace to rule the State uprightly, exhorting the People to be obedient to them; and begged Pardon of God, and of all Men, whom he might have offended. After which, he ſubmitted to the Block: But the Executioner, obſerving the Collar of his Waſtcoat to be in his Way, perſuaded him to get up again, and pull his Waſtcoat off; after which he lay down again, and his Head was ſevered from his Body at one Blow.

His Head ſevered from his Body.

His Son remained deprived of all his Titles, and Eſtate, till the firſt Year of Queen *Elizabeth*, when her Majeſty created him Earl of *Hertford*, and Baron *Seymour:* His Grandſon, *William*, was created Marquis of *Hertford*, in the Year 1640. and in the Year 1660. the Marquis made the following Repreſentation of his Caſe to the Houſe of Lords (*viz.*)

His Poſterity reſtored to their Honour in Part.

The Caſe of the Marquis of Hertford, *preſented to the Lords,* An. Dom. 1660.

Edward Earl of *Hertford*, (Great Grandfather of the ſaid Marquis) was by Letters Patents, bearing Date the 6th of *April*, 1 *Ed.* VI. created Duke of *Somerſet*; to hold to him and the Heirs Male of his Body, upon the Body of the Lady *Anne*, his then Wife, with Remainders over. The ſaid Duke, afterwards, in *Michaelmas* Term, 5 *Edw.* VI. was indicted of Felony, for procuring and ſtirring up others to take and impriſon *John* Earl of *Warwick*, (one of the King's Privy-Council). Which Indictment, though void in Matter and Form, was pretended to be grounded on the Statute of 3 & 4 *Edw.* VI. which makes it Felony to ſtir up, and procure others, to *take away the Life* of any of the King's Council. But this Indictment was only for

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ſtirring up others, *to impriſon a Privy Councillor* which was never reduced into Act) and the ſame, therefore, declared void by learned Judges. Yet the ſaid Duke was found guilty of Felony, and put to Death for this Fact, which was but a pretended Felony; and, if true, yet no entailed Eſtate was forfeitable thereby.

However, ſuch was the Malice of the Duke's Enemies, that in the Infancy of his Heir, who was acknowledged for Duke of *Somerſet* ſeveral Months after his Father's Deceaſe, they procured an Act of Parliament, in the ſaid Year (5 *Edw.* VI.) entitled, *An Act touching the Limitation of the late Duke of* Somerſet's *Lands*; wherein there is a Clauſe obliquely inſerted, to take away the ſaid Honours, ſo entailed as aforeſaid; which, by no Felony, how notorious ſoever, could by Law have been forfeited: It was humbly conceived, therefore, to be moſt agreeable to Juſtice, to reſtore the ſaid Marquis, who was Heir Male of the Body of the ſaid Duke, and the Lady *Anne* his Wife: *And thereupon the ſaid Marquis of* Hertford *was in the Month of* September, 1660. *reſtored to the Dukedom of* Somerſet, *by a Repeal of the ſaid Act of the* 5*th of* Edw. VI.

He is reſtored to the Honour of Duke, by Act of Parliament.

Remarks on the Duke of Somerſet's *Trial.*

Moſt of our Hiſtorians relate, (and I find the Editor of this ſecond Collection of State Trials of the ſame Opinion) that the firſt Proſecution of this Duke was before the Parliament; and I muſt confeſs, I was, for ſome Time, in the ſame Error, till I examined the Matter more cloſely; but I believe it is now very evident, from the Account I have already given of that Proceeding, that this Proſecution was either before the Council, or the Star-Chamber; and that the Duke was fined and impriſoned, by the Authority of one of thoſe Courts: To which I am aware it will be objected, that the Privy-Council have no ſuch Authority; and I will agree they have not now: But in thoſe Times they frequently aſſumed a Power equal to this; of which there are numerous Inſtances in the Council-Books: Particularly, we find, they have ordered Houſes to be pulled down, and have prohibited People building upon their own Lands, in and about the Cities of *London* and *Weſtminiſter*; and done ſeveral other Things, that can now only be effected by Act of Parliament. But, beſides, had there been any Thing illegal, or irregular, in the Privy Council's taking Cognizance of this Matter, the Members of the Privy-Council were alſo Members of the Court of Star-Chamber, and might have cenſured him there, if he had objected to their Juriſdiction, as Privy-Councillors; and, indeed, I am in ſome doubt, whether his Fine was ſet by them, as Members of the Privy-Council, or, as Members of the Star-Chamber; but, whether by the one, or the other, I find no Footſteps, upon Record, of its being done in Parliament. But, to proceed: It is very remarkable, that the principal Article objected againſt the Protector, was, his aſſuming more Power than belonged to him; for the endeavouring of which, he had cauſed his Brother, the Admiral, to be deſtroyed by a Bill of Attainder the Year before: And, though he found the great Men then very ready to concur with him in ruining the Admiral, he found them no leſs ready to pull him down, when he had deprived his Family of that Support: Nor were they only incenſed againſt him, for his aſſuming the Regency, but for putting a Stop to the Encroachments of the Nobility, and Gentry, on the Commons; or, at leaſt, to their encloſing, and laying down their arable Lands, and converting them into Paſture; whereby the Poor were not only deprived of their Commons, but of an Opportunity of getting their Livelihoods by their Work, (Paſture Grounds not employing a fourth Part of the Hands that the arable do.) But, as this rendered him the Object of the Gentry's Hatred, he became thereby the Darling of the common People; and imagined, poſſibly, by their Aſſiſtance, he ſhould have been able to have ſupported himſelf againſt the Power of his Enemies. But the Gentry had no ſooner wheedled him out of the foreign Troops, he maintained for his Defence, and prevailed on him to diſmiſs them, but he found his Error; and that the Common People, without ſtanding Forces, were by no means, able to protect him againſt the united Influence of the Nobility and Gentry, and the Popiſh Intereſt. Finding therefore, when it was too late, that there was no ſtemming the Torrent, he endeavoured to ſave himſelf, we ſee, by a moſt abject Submiſſion; believing, probably, by yielding to the Times, he ſhould not only preſerve his Life, but one Day find an Opportunity of reſuming his Authority: Beſides, he had ſo lately ſhewn them, how eaſy it was to cut off an Enemy, by a Bill of Attainder, that he could not but expect, they would follow the Precedent he had ſet them, if he did not prevent it by a timely Submiſſion. And by this Conduct, it appears, he obtained his Liberty, had a great Part of his Eſtate reſtored him, and a ſhare once more allowed him in the Adminiſtration: But the Earl of *Warwick* (afterwards Duke of *Northumberland*) who had now formed a Scheme, to ingroſs the Adminiſtration of the Government into his own Hands, either finding the Protector gain ſo faſt upon the young King's Affections, that he was like to reſume his former Authority; or, at leaſt, that he would remain a perpetual Bar to his own ambitious Projects, confederated once more with the Protector's Enemies, againſt him; and never ceaſed perſecuting him, till he brought him to the Scaffold.

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The Editor of the ſecond Collection of Trials, has put this Proceeding together very oddly. He firſt gives us the Record of the Conviction and Attainder of the Duke; ſentences him to be hanged, and then produces the Evidence, and his Defence, which the Bookſellers, no doubt, will ſee rectified, if ever they print another Edition.

As to the Indictment, it includes both a Charge of *Treaſon* and *Felony*, which is not *uſual*, if it be *legal*; however, the Duke, 'tis obſerved, had not Preſence of Mind to demand Council upon it. The Act he was indicted upon, was the Statute of the 3 & 4 *Edw.* VI. Cap. v. the firſt Paragraph whereof enacts, That if any Perſons, to the Number of twelve, or above, being aſſembled together, *to kill, take, or impriſon any of the King's Privy-Council*;

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cil; or unlawfully to alter or change any Laws made or eſtabliſhed for Religion, by Authority of Parliament, or any other Laws of this Realm; the ſame Number of twelve, or above, being required by the Sheriff, or any Juſtice of Peace, by Proclamation in the King's Name, to depart to their Dwellings, and they, or any of them, notwithſtanding, ſhall continue together, by the Space of an Hour after ſuch Proclamation; or, after that, ſhall forcibly attempt to do, or put in ure, any of the Things above ſpecified, ſuch Offenders ſhall be adjudged guilty of *High-Treaſon*.

And in the ſame Act there is another Clauſe, which ſays, *If any Perſon, or Perſons, by open Word, or Deed, ſhall* PROCURE, MOVE, OR STIR ANY OTHER *Perſon, or Perſons, to ariſe, or make any traiterous or rebellious Aſſembly, to the Intent, to do, exerciſe, or put in ure, any of the Things above-mentioned; then every Perſon, ſo procuring, moving, or ſtirring up any other, ſhall be deemed and adjudged a* FELON, *and ſhall loſe the Benefit of his Clergy and Sanctuary.*

The Indictment hereupon firſt charges the Duke with High Treaſon, in aſſembling, with other Perſons, to the Number of an hundred, to take and impriſon the Duke of *Northumberland*, then a Privy-Councillor; which Charge, it ſeems, his Peers acquitted him of.

But the Indictment charging him alſo with *Moving and Inciting* others to take and impriſon the ſaid Duke, which is made *Felony* by the ſaid laſt recited Clauſe; this, it ſeems, a Majority of the Lords were of Opinion was well proved, and thereupon he was convicted and condemned.

By the Evidence of Sir *Thomas Palmer*, it appears, that the Duke of *Somerſet* had contrived and conſpired to invite the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, to an Entertainment, and to have killed them there: And this Depoſition was confirmed by *Crane*.

This was the only Evidence, given at the Trial, the Lords could be governed by, to find the Duke of *Somerſet* guilty of Felony; and as the Indictment *does not charge him* with moving or inciting any People to kill the Duke of *Northumberland*; it was the Opinion of many, that this Evidence could not ſupport that Part of the Indictment, that charged the Priſoner with moving others to *take and Impriſon* the Duke of *Northumberland*. The Act, indeed, makes it Felony to move others, either to *kill* or *impriſon* a Privy Councillor; but, as the Indictment does not *charge* the Priſoner with moving others to *kill* him, he could not be found guilty of that; and the Depoſition ſays not one Word of his moving others to *impriſon Northumberland*. But 'tis probable the Lords might think, that the Intention of *killing* him, comprehended a Deſign of *taking* him firſt, and thereupon convicted the Priſoner.

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The Marquis of Hertford's Repreſentation of the Duke's Caſe.

William Marquis of *Hertford*, Great Grandſon to this Duke of *Somerſet*, in his Petition, to be reſtored to that Title at the Reſtoration, obſerves indeed, That the Statute of the 3 & 4 *Edw.* VI. makes it Felony to ſtir up and procure others to *take away the Life of* any of the Privy-Council; but that the Indictment was only for ſtirring up others to *impriſon* a Privy-Councillor, *which never being reduced into Act, was not Felony:* And, indeed, the moving and inciting others, either to *kill* or *impriſon* a Privy-Councillor, *unleſs ſome Act was done, in purſuance of ſuch Motion*, by the like Opinion, ought not to have been interpreted Felony; and conſequently the Duke ought to have been acquitted.

There were theſe further Hardſhips alſo in this Trial; that the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, who were Parties in the Cauſe, were allowed to ſit as his Judges; and that the Witneſſes were not examined *Viva Voce* in Court, which might have given a different Turn to the Evidence: But the Duke could not complain of Hardſhips with a very good Grace, after he had put the greateſt Hardſhips upon his Brother, and cut him off by an Act of Attainder, without ſuffering him to be heard.

Give me leave to obſerve farther, that the Parliament were ſo far convinced of the Hardſhips that had been put upon the Admiral, that the Lady *Mary Seymour*, only Daughter and Heireſs of the Admiral, by Queen *Katherine*, was by Act of Parliament, in the 3d & 4th of *Edw.* VI. reſtored to Blood.

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The Trial of Sir NICHOLAS THROCKMORTON, Knight, for *High-Treaſon*, before Commiſſioners of *Oyer* and *Terminer*, 17 *April*, 1554. 1 *Mariæ*.

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Sir Nicholas Throckmorton's *Trial.*

The Charge.

HE was charged with levying War againſt the Queen; being an Accomplice in *Wyat*'s Rebellion; intending to depoſe and deſtroy her Majeſty; and, in order to it, with conſpiring to ſeize the *Tower* of *London*.

The Evidence.

The Evidence to prove theſe Treaſons, was the written Confeſſion of------ *Winter*, one of the Conſpirators; wherein it is ſaid, that the Priſoner was intimate with *Wyat*, and had declared himſelf againſt the *Spaniſh* Match; and that *Wyat* had communicated his Deſign of ſeizing the *Tower* to the Priſoner.

The Confeſſion of one *Crofts* alſo was read againſt him, importing, that the Priſoner was an Accomplice of *Wyat*'s; that they often met, and conſulted concerning an Inſurrection; and that Sir *Nicholas* promiſed to go into the Weſt, and join the Earl of *Devon*, Sir *Peter Carew*, and other Malcontents there.

The Confeſſion of *Cuthbert Vaughan*, under Sentence of Condemnation for the ſame Treaſon, was likewiſe read, importing, that he had ſeveral Conferences with the Priſoner concerning *Wyat*'s Rebellion, and that Sir *Nicholas* declared his Intention of joining the Malcontents. This Witneſs was brought into Court, and atteſted the Truth of his Confeſſion upon Oath.

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Part of the Priſoner's own Confeſſion alſo was read againſt him, wherein he acknowledged that he had a Conference with *Wyat*, *Carew*, *Crofts*, *Rogers*, and *Warner*, concerning the *Spaniſh* Match, and the Alteration of Religion; and that he (the Priſoner) had ſaid he would hinder the Match with *Spain* as much as he could by Perſuaſion; that he had alſo ſaid, The Diſcipline of the Clergy might now rather be reſembled to the *Turkiſh* Tyranny than to the teaching of the Chriſtian Religion; and had diſcourſed of the *French* King's hindering the *Spaniards* coming hither.

The Depoſitions of the Duke of *Suffolk*, who had been executed for the ſame Treaſon, were alſo read againſt the Priſoner, importing, that the Lord *Thomas Grey* informed the Duke that Sir *Nicholas Throckmorton* was privy to all the Devices againſt the *Spaniards*, and had agreed to go down with the Earl of *Devon*, and join the Rebels in the Weſt; and laſtly, it was urged that *Wyat* himſelf had charged the Priſoner, as an Accomplice with him in his Treaſons.

His Defence.

The Queen's Counſel having produced all their Evidence, the Priſoner entered upon his Defence; and firſt he deſired, that the Counſel would uſe him like a Fellow-Chriſtian, and not endeavour to miſlead the Jury; for he was ſenſible that by Perſuaſions, Enforcements, Preſumptions, applying, implying, inferring, conjecturing, deducing Arguments, and wreſting of Law, unlearned Men might be induced to think and judge Things that were indifferent, or at worſt but Overſights, to be Treaſons.

He inſiſts there was no Evidence of Treaſon.

That as to *Winter*'s Confeſſion, which had been read as Evidence againſt him; if it were all true, there was no Treaſon in it. He had, indeed, converſed with *Wyat*, as he might with any other Man; but knew nothing of his Purpoſe. He acknowledged alſo, that he did diſlike the Queen's Match with *Spain*, and the coming of the *Spaniards* to *England*, and ſo did the whole Realm almoſt; but this was never yet conſtrued High-Treaſon. That as to the Confeſſion of *Crofts*, it ought not to affect him, unleſs he was brought Face to Face, as the Law required; and to *Vaughan*'s Teſtimony he objected, that he was a condemned Man, and became a Witneſs againſt him to ſave his own Life. That by 6 *Edw.* VI. No Man could be indicted or convicted of Treaſon, but by two lawful Witneſſes, brought Face to Face; that *Vaughan* was but one Witneſs, and a very exceptionable one, having been repriev'd from Time to Time, in order to compel him to accuſe others.

That the Confeſſion of another was no Evidence.
That a condemned Man could not be a Witneſs.
That there ought to be two Witneſſes produced Face to Face.
That his whole Confeſſion ought to be read.
That what another had ſaid was no Evidence.

He thought it hard that only Part of his own Confeſſion was ſuffered to be read, which would have made more for him than againſt him, if it had been read through: That the Duke of *Suffolk*'s Depoſitions contain'd only what the Lord *Grey* told him concerning the Priſoner, which ought not to affect him, unleſs the Lord *Grey* were produced, and atteſted the ſame in Court: And whatever *Wyat* had ſaid in hopes of ſaving his Life, he had unſaid again at his Execution, acquitting the Lady *Elizabeth*, as well as others with his laſt Breath; notwithſtanding he had accuſed them in hopes of Favour.

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Then, applying himſelf to the Jury, he obſerved, that he could not be convicted of the Treaſons in this Indictment; becauſe all Treaſons were repealed, but thoſe Offences which were declared to be ſuch, by the 25th of *Edward* III. and deſired that the Statute of the 25th of *Edward* III. might be read. To which the Court anſwering, That no Books ſhould be brought there, the Priſoner replied, Do you bring me hither to try me by Law, and will you not ſhew me the Law? I have heard that her Majeſty charged you to adminiſter Juſtice indifferently; and, notwithſtanding the old Error amongſt you, which did not admit a Witneſs to ſpeak, or any Thing to be offered in Favour of the Priſoner, her Highneſs's Pleaſure is, that whatever can be brought in Favour of the Subject ſhall be admitted and heard: Therefore you ought of Right to hear the Statute read, and reject nothing that can be ſpoken in my Defence.

That the 25 Ed. III. might be read, which the Court refuſed.
Formerly no Witneſſes or Proof admitted againſt the Crown.

The Court ſtill inſiſting he ought to have no Books read there, for that the Bench were Judges of the Law, he obſerved, that they ſeemed to offer him Law, but indeed afforded him only the Form of Law; and ſince he could not have the Statute read, he would endeavour to repeat the Subſtance of it, deſiring the Aſſiſtance of the Court if he ſhould be miſtaken; and, having recited the Words, deſired the Jury to obſerve what were Treaſons at that Time, and how they were to be tried, namely, by open Deed, which the Law termed Overt-Act, and that there were no Overt-Acts that proved his being concerned in any of the Treaſons laid in the Indictment. To this the Queen's Counſel anſwered, There were ſtill divers Treaſons at Common Law, beſides thoſe enumerated in the 25 *Edward* III. but that there was Matter enough proved againſt him to bring him within the Danger of that Statute: This the Priſoner denied, and inſiſted again, that every Perſon, accuſed of High Treaſon, ought to be proved guilty thereof, by ſome open Deed, before People of their Condition.

The Counſel affirm, that there were ſtill Treaſons at Common Law.

The Court anſwered, *by People of their Condition*, was meant thoſe involved in the ſame Crime, diſcovering the Priſoner's Treaſons; as *Wyat*, already attainted, had declared him one of his Accomplices.

The Court miſinterpret the Act.

The Priſoner very juſtly replied, That *by People of their Condition*, was meant, of the State and Condition of the Inqueſt that were to try him; and that the Evidence of *Wyat*, or of the Rebellion he had raiſed, in which he (the Priſoner) was not concerned, could not affect him; and beſides, *Wyat* had acquitted him, and declared, he knew nothing of it, demanding, where was the open Deed that proved the Treaſon wherewith he was charged? He added, that he had heard *Stamford* and the reſt of the Queen's Counſel, declare in the Parliament-Houſe, that it was a Maxim in Law, which ought never to be violated, *That no Penal Statute ought to be extended, or wreſted, beyond the plain Words and Letter of ſuch Statute*; for, conſidering the private Affections, many times, both of Princes and Miniſters, it would be very dangerous to the Subject to refer the Conſtruction of Penal Laws to any Judges Equity,

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Equity, which might either by Fear of higher Powers be ſeduced, or through Ignorance or Folly be abuſed.

The Queen's Counſel urged, that he had entered into a Conſpiracy with *Wyat*, to prevent the coming of the *Spaniards*; and promiſed to his utmoſt againſt them, which encouraged *Wyat* to levy War againſt the Queen.

The Priſoner anſwered, That it was no Treaſon to enter into Converſation how to prevent the coming of the *Spaniards*, or to declare he would endeavour to hinder it in a legal way; and there was no Evidence of his endeavouring to prevent it by Force, or his procuring any other to attempt it in that Manner.

The Priſoner acquitted.

The Jury threatened.

Then the Court adjourned; and in the Afternoon the Jury brought in their Verdict NOT GUILTY. Whereupon the Attorney-General moved, that they might give 500*l.* Security for their good Behaviour: But it does not appear that they were obliged to give ſuch Security; much leſs were they fined for acquitting the Priſoner, as ſome Hiſtorians have related. It is probable they might be reprimanded and threatned; and this muſt be acknowledged illegal: But the Courts of Juſtice acted very arbitrarily in thoſe Days. They alſo remanded the Priſoner back to the *Tower* after he was acquitted, under pretence, the Government had other Matters againſt him; but I do not find he was proſecuted for any other Offence. This ſeems to be the ſame Gentleman that was afterwards Queen *Elizabeth*'s Ambaſſador in *Scotland*.

Remarks on Sir Nicholas Throckmorton's *Trial.*

This is the firſt Proceeding in the State Trials that has the Appearance of a regular Trial; and though the Judges miſinterpreted the Law, and put great Hardſhips on the Priſoner, reading the Confeſſions of condemned Men againſt him, not ſuffering the Act 25 *Edward* III. to be read, and refuſing to examine the Witneſſes. Yet Matters appear to be much mended ſince the Time of *Henry* VIII. to which the Statute of the firſt of Queen *Mary*, which reduced all Treaſons to the Standard of 25 *Edward* III. greatly contributed. Before that Statute, every Thing, almoſt, was interpreted to be Treaſon, the Government was pleaſed to call ſo; and the higheſt Preſumptions and Circumſtances were made Evidence of it. But this Gentleman having the Skill and Courage to apprize the Jury, that nothing was then Treaſon but what the 25th of *Edward* III. made ſo; and that all Treaſons muſt be proved by ſome Overt or Open Acts, atteſted by two Witneſſes; and meeting with a Jury of equal Honeſty and courage, had the good Fortune to come off; though the Court did all that lay in their Power to brow-beat the Jury, and wreſt the Law to his Deſtruction. A ſcandalous Practice which both Judges and Counſel in every Reign have ſhewed themſelves too much addicted to, hunting down unfortunate Men, and, as my Lord *Bacon* ſays, *playing Prizes for Blood at the Bar of Juſtice.*

1554. 1 Mar.

The Proſecution of Earl Bothwell, *for the Murder of Lord* Darnley.

The next is a Proceeding called, The Trial of *James* Earl of *Bothwell*, for the Murder of *Henry* Lord *Darnley*, Husband of *Mary* Queen of *Scots*, at *Edinburg*, *April* 12. 1597. But, as *Bothwell* was only ſummoned before the Court, in order to be acquitted, and the Proſecutor, the Earl of *Lenox*, durſt not appear againſt him, it does not require any further Notice ſhould be taken of it here.

1571. 14 Eliz.

The Trial of THOMAS HOWARD Duke of NORFOLK before *George Talbot* Earl of *Shrewſbury* Lord High Steward, *Reynold* Earl of *Kent*, and twenty three other Peers, commiſſioned to try him, for *High-Treaſon*, *January* 16. 1571. 14 *Eliz.*

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The Duke of Norfolk's *Trial, for High-Treaſon.*

The Charge againſt him.

THE Indictment charged the Duke with compaſſing and imagining the Death of the Queen, conſpiring to raiſe a Rebellion to ſubvert the Government, and endeavouring a Change of the eſtabliſh'd Religion:

Overt-Acts.

And the Overt-Acts, laid as an Evidence of theſe Deſigns, were, 1. His endeavouring, without the Conſent of his Sovereign Queen *Elizabeth*, to be joined in Marriage with *Mary* late Queen of *Scots*, who laid claim to the preſent Poſſeſſion of the Crown of *England*, and had aſſumed the Arms of *England*. 2. His correſponding with, aiding, and aſſiſting, *Thomas* Earl of *Northumberland* and *Anne* his Wife, and *Charles* Earl of *Weſtmoreland*, *&c.* (in open Rebellion againſt her Majeſty, and outlawed for the ſame) with divers Sums of Money. 3. His adhering to, aiding, and aſſiſting, *James* Duke of *Caſtel-le-Roy*, the Earl of *Huntley*, and others, the Queen's Enemies. 4. His holding a traiterous Correſpondence with the Pope, and the King of *Spain*, inviting them to invade this Realm, and promiſing to raiſe a Rebellion, and join the Enemy, in order to ſet the Queen of *Scots* at Liberty; to depoſe Queen *Elizabeth*, and join himſelf in Marriage with the ſaid Queen of *Scots*. 5. That he had ſent Letters by one *Rodolph* a Merchant, to the Pope, and King of *Spain*, deſiring their Aſſiſtance, in perpetrating his ſaid Treaſons; and that he had received a Letter from Pope *Pius Quintus*, Biſhop of *Rome*, promiſing him Aid and Aſſiſtance.

He is denied Counſel.

The Duke deſired he might have Counſel; but was anſwered, that was never granted in Caſes of High-Treaſon; and having pleaded Not Guilty, the Evidence againſt him was produced.

The Evidence, written Depoſitions.

And firſt, the Examination of the Biſhop of *Roſs* (formerly Ambaſſador from the Queen of *Scots* to Queen *Elizabeth*) taken in the *Tower*, the 5th of *November*, 1571. where that Prelate was detained Priſoner for practiſing againſt Queen *Elizabeth*'s Government, in Behalf of the Queen of *Scots*, was read.

To prove the Treaty of Marriage.

In this Examination the Biſhop depoſes, That the Duke of *Norfolk* had adviſed the *Scots* Commiſſioners at *York*, to ſuppreſs the Evi-

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dence againſt their Queen; and had alſo propoſed to the Deponent, and to Earl *Murray*, to marry the ſaid Queen.

A Letter of Earl Murray's *read as Evidence.*

A Letter of Earl *Murray*'s alſo was read, being an Anſwer to another Letter, ſent him by the *Engliſh* Miniſtry, to enquire what he knew concerning the Duke of *Norfolk*'s Practices, as to the Commiſſion at *York*, and the intended Marriage.

In this Letter Earl *Murray* ſays, That the Duke adviſed him at *York*, to compromiſe Matters; to be tender of the Honour of the Queen of *Scots*, and to ſuppreſs her Letters, that ſhe might not be defamed in *England*; but that, the Commiſſion being adjourned to *London*, he (the Earl) was obliged to lay open the whole Matter; which the Duke reſenting, he was apprehenſive of being murdered in his Return to *Scotland*; and therefore, to appeaſe the Duke, promiſed to promote the Marriage, and thereby ſaved his Life: He therefore entreated Queen *Elizabeth* to have a favourable Opinion of him, having pretended to aſſent to the Match out of pure Neceſſity.

A Letter of the Biſhop of Roſs's, *to the Queen of* Scots, *read.*

Then a Letter from the Biſhop of *Roſs* to the Queen of *Scots* was read, wherein he tells her, That he had learned from the Duke of *Norfolk*, that Queen *Elizabeth* did not deſign to bring her Cauſe to any Determination; but to hear what Earl *Murray* could alledge againſt her, in order to bring her into Contempt and Diſgrace with the People of *England*; for that Queen *Elizabeth* was in ſome Dread of her being ſupported by her Uncles in *France*, and therefore adviſed the Queen of *Scots* to write a ſubmiſſive Letter to Queen *Elizabeth*, referring all her Concerns to Her, and declaring, ſhe relied more on her Friendſhip, than upon her Uncles, or any other Princes whatever.

Other Depoſitions of the Biſhop of Roſs's.

Part of the Biſhop of *Roſs*'s Examination, of the 6th of *November*, 1571. alſo was read, wherein he ſays, That Earl *Murray* was in fear of being murdered in his Return to *Scotland:* Whereupon he (the Biſhop) did by the Duke of *Norfolk*'s Direction write to the Queen of *Scots*, that nothing might be attempted againſt *Murray*, becauſe he had yielded to favour the Duke's Deſigns; and further depoſed, that the Murder was to have been committed near *Northallerton*, by the *Nortons*, *Markenfield*, and others, as the Examinant was informed, by the Queen of *Scots* Servants.

A Copy of the Priſoner's Letter to Murray, *read.*

A Copy of a Letter, written by the Duke to Earl *Murray*, was alſo read, wherein his Grace ſays, He perceived the Earl was well-affected to the Advancement of the Commonweal, and the uniting of the Iſland; and had a good Inclination towards him, which was a great Satisfaction: That he (the Duke) had ſo far proceeded in the Marriage with his Siſter, that he could not in Conſcience revoke what he had done, or ever deſigned it while he lived; but that he could not with Honour proceed further till he had removed ſome Stumbling-Blocks; and when this was done, all Things ſhould be performed to the Satisfaction of the Earl; and deſires he would uſe all Means to defeat the Deſigns of their Enemies, who oppoſed the Match; and for the reſt, referred himſelf to the Lord *Boyd*, who was empowered by the Queen of *Scots*, and himſelf, to treat with the Earl.

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A Diſcourſe of the Queen's related by her Counſel.

To this the Queen's Counſel added, as from the Queen's own Mouth, that the Duke had complained to her Majeſty of the Rumour that was ſpread, of his Deſign to marry the Queen of *Scots*, and deſired it might be enquired into, and among other Expreſſions ſaid, *To what End ſhould I marry her, being ſo wicked a Woman, ſuch a notorious Adultereſs and Murderer? I love to ſleep upon a ſafe Pillow, and account myſelf as great a Prince, at home, at* Norwich, *as ſhe, though ſhe were in the Middle of her Kingdom: That the Revenues of the Crown of* Scotland *were inferiour to his own.* And, *ſhould he ſeek to match with her, knowing ſhe pretended a Title to the preſent Poſſeſſion of the Crown of* England, *her Majeſty Queen* Elizabeth, *might juſtly charge him with ſeeking her own Crown.*

Part of the Priſoner's Examination read.

Then part of the Duke's Examination the 6th of *November* 1571. was read, wherein he ſays, that, her Majeſty charging him at *Titchfield* with his intended Marriage with the Queen of *Scots*, he did acknowledge he had received Letters from her: That the Matter had been moved, but nothing concluded; and that thereupon her Majeſty commanded him on his Allegiance, not to deal any further therein; and a Letter from the Duke, and the reſt of the Commiſſioners, to Queen *Elizabeth* from *York* was read, wherein they acquaint her Majeſty, that ſeveral Letters and Ballads had been produced, written with the Queen of *Scots* own Hand, diſcovering ſuch inordinate and filthy Love between her and *Bothwell*, ſuch loathing and abhorring of her Husband that was murdered, and ſuch an Account of the Conſpiracy againſt his Life, as every good Man muſt deteſt and abhor: That they had encloſed a Paper with the principal Points contained in thoſe Letters, that her Majeſty might judge whether they were ſufficient to convict her of that deteſtable Crime, the Murder of her Husband, which, in their Opinion and Conſciences, *if the ſaid Letters were written with her own Hand, as they believed they were*, was very hard to be avoided.

A Letter from the Duke, and the Commiſſioners at York, *read.*

Banniſter's *Examination read.*

The Confeſſion of *Banniſter* alſo was read, to ſhew, that the Duke had no Affection for the Queen of *Scots* Perſon, and was only moved by Ambition to attempt the Match.

And the Biſhop of Roſs's.

Then another Part of the Biſhop of *Roſs*'s Confeſſion was read; wherein the Biſhop depoſes, that when he demanded of the Duke, what he intended to do in the Matter of the Marriage, if Queen *Elizabeth* would not conſent to it, the Duke anſwered, he knew ſhe would, though not at firſt; becauſe moſt of the Council, and the Nobility, were againſt it: And that afterwards, when the Queen appeared offended with the Duke, he told this Examinant, he would go into his own Country, with the Earls of *Arundel* and *Pembroke*, and there they would adviſe with their Countrymen, and Friends, of the likelieſt Means to advance the Cauſe: To which the Biſhop ſaying, the Queen would fetch them out of the Country by Force, the Duke anſwered, No Nobleman in *England* would accept that Office: He knew their Minds; eſpecially thoſe in the *North*, who would aſſiſt him: And, if the Queen would firſt purſue him, he ſhould find Friends enough to aſſiſt him, and the *Scottiſh* Queen might be in Safety; for that

was

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was the principal Mark he ſhot at: And the Biſhop further depoſed, that *Liggons* told him, the Duke was reſolved to go through with the Matter by force, if the Queen would not conſent; and that, at this Time, Meſſages frequently paſſed between the *Scotiſh* Queen, the Duke, and them in the *North*.

What another ſaid, brought as Evidence againſt him.

The Duke confeſſes part of the Charge

Then the Duke's Examination, concerning his ſending Money to *Scotland*, was read, which he confeſſed in Court; as alſo, that a Deſign of ſeiſing the *Tower*, was moved to him; but, he ſaid, he did not conſent to it.

His Secretary's Examination read againſt him.

Hickford, the Duke's Secretary's Examination, alſo, was read; wherein he ſaid, the Duke adviſed the Queen of *Scots*, not to deliver up her Son to Queen *Elizabeth*; nor certain ſtrong Places in *Scotland*, which the Queen of *England* demanded; or the *Engliſh* Rebels that had fled thither; and the Duke confeſſed the Truth of it in Court, except his adviſing her not to deliver up the Rebels.

Barker's *Examination read.*

Then the Examination of one *Barker* was read, importing that the Duke was concerned in a Deſign of reſcuing the Queen of *Scots*.

He was alſo charged, with having made his Submiſſion to the Queen, and promiſing, on his Faith and Allegiance, not to proceed in the Marriage, or any other Matter relating to the *Scotiſh* Queen; and then ſending the Queen of *Scots* a Copy of his Submiſſion, before he ſigned it: *Which the Duke confeſſed.*

He confeſſes more of the Charge.

Cavendiſh's *Depoſitions.*

The Depoſitions of one *Cavendiſh*, a Dependant of the Duke's, alſo, was read, wherein he ſays, that the Duke ordered him to labour the Cauſe of his Marriage; and that he heard the Duke affirm, that he would loſe his Life before he would loſe that Marriage; adding, that nothing could undo him, but the Riſing of the Northern Lords; and he was afraid they would riſe.

Evidence of the Duke's treating with the Pope, and Spain.

Other Examinations read againſt him.

The next Article the Queen's Counſel inſiſted on, was, the Duke's treating with the Pope, and the King of *Spain*, in Favour of the Queen of *Scots*: To prove which, another Part of the Biſhop of *Roſs*'s Examination was read, and the Examination of one *Barker*, importing, that the Duke ſent one *Rodolph*, a Foreign Merchant, to the Duke of *Alva*, and the Pope, in the Name of the *Scotiſh* Queen, and himſelf, to procure Money and Forces, to invade the Realm, and maintain the Queen of *Scots* Title; and, that the Duke promiſed to join them, with his Friends, when they landed; and received a Letter from the Pope, approving the Enterprize.

Evidence of his aiding the Rebels in Scotland.

The next Thing the Queen's Counſel inſiſted on, was, the Duke's aiding, and aſſiſting, the Earls of *Weſtmoreland* and *Northumberland*, who had been in Rebellion, and were fled into *Scotland*: To prove which, other Parts of the Biſhop of *Roſs*'s and *Barker*'s Examinations were read, importing, that the Rebels, being reconciled to the Church of *Rome*, wrote to the Pope, for his Aſſiſtance, who ſent them a Supply of Money; which was conveyed towards them by the Duke's Means, but intercepted before it reached them. The Examination of *Banniſter* alſo was read, who depoſed, that the Duke had conveyed a Packet of Letters from the *French* Ambaſſador, to the Duke of *Chateleroy*, and the Lord *Herries*, the Queen's Enemies in *Scotland*, and had alſo ſent them Money.

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The Duke, in his Defence, inſiſted, That it was not Treaſon to correſpond with the *Scotiſh* Queen, or to propoſe a Marriage with her; for, when ſhe laid claim to the Crown, and quartered the Arms of *England*, ſhe was married, and in the Power of her Husband; and ſhe had made no ſuch Claim ſince ſhe was a Widow: Beſides, the Queen of *England*, was in Amity with her, and had entered into ſeveral Treaties with that Princeſs; which ſhewed ſhe was not an Enemy to the State, and conſequently it could not be Treaſon to correſpond with her.

The Duke's Defence. That it was not Treaſon, to treat with the Scotiſh *Queen.*

He inſiſted alſo, that the *Scots*, who accuſed him, were not lawful Witneſſes; and that they, and the other Witneſſes, had confeſſed themſelves guilty of the Crimes they accuſed him; and gave their Evidence, to obtain Favour themſelves. But the moſt unanſwerable Part of his Defence was, that the Witneſſes were not produced Face to Face, as the Statute of the 5 & 6 of *Edward* VI. requires.

That the Scots *were not legal Witneſſes.*

That the Witneſſes did not give their Evidence Viva Voce.

That, though it had been ſuggeſted, he propoſed this Match with the Queen of *Scots*, in order to depoſe the Queen of *England*, and uſurp her Throne; neither the Biſhop of *Roſs* or any other of the Witneſſes, could charge him with any ſuch Views; nor had he any Thoughts of altering Religion, as was ſuggeſted, being both in his Judgment and Profeſſion a Proteſtant.

That there was no Evidence of his Deſign to depoſe the Queen.

That Earl *Murray* was a prejudiced Perſon, and ſought his Life; and therefore his Teſtimony ought not to be admitted againſt him: Nor did their Miſunderſtandings ariſe from the Earl's oppoſing the Marriage, as had been ſuggeſted, but from other Cauſes. That he never heard of the Deſign of taking away Earl *Murray*'s Life, till the Time was paſſed, when it was to have been done; and then the Biſhop of *Roſs* firſt acquainted him with it.

That Earl Murray *was prejudiced againſt him.*

The Duke frequently, and with a great deal of Juſtice, repeated his Complaint, That the Witneſſes were not brought Face to Face: To which the Queen's Counſel anſwered, That the Law was ſo, indeed, for a Time; but, it being too hard and dangerous for the Prince, that Law was repealed. The Duke alſo complained, That he had not been permitted to ſpeak with any Body during his Confinement, or to produce his Witneſſes or Proofs, in Order to his Defence; to which no Anſwer was given.

The Queen's Counſel affirm, it was not neceſſary to produce the Witneſſes; and do not ſuffer the Priſoner to bring Witneſſes for him.

Then he obſerved again, That no manner of Proof had been brought, of any Deſign he had againſt the Queen's Perſon, or Government; of his levying War, or committing any Treaſon, ſpecifyed in the 25 *Edw.* III. That he had treated with the *Scotiſh* Queen, he acknowledged; but this did not amount to High-Treaſon; and he confeſſed, the Biſhop of *Roſs* did ſend him a Letter from the Queen of *Scots*, wherein ſhe complained of her Subjects, and ſaid, ſhe would ſeek other means for her Relief: But he diſliked all thoſe Devices, and adviſed her, to depend only on her Majeſty, or he, and all her Friends in *England* would forſake her. He acknowledged alſo, that *Rodolph* had been brought to him, and diſcourſed with him concerning the *Scotiſh* Queen; particularly he ſaid, he would endeavour to procure Money of the Duke of *Alva*, for Neceſſaries for her, as he had done formerly, and that he deſired

Confeſſes, he was privy to the Queen of Scot's *Deſign, of ſoliciting foreign Aid.*

He confeſſes his treating with the Pope's Agent, to procure the Queen of Scots *Money.*

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fired the Duke's Letters to the Duke of *Alva*, in that Princeſs's Favour; but he put him off, and would not write; nor did he ever give Inſtructions to *Rodolph*, to ſollicit the King of *Spain* for Men or Money: And whereas it was ſaid, that ten thouſand Men were to invade *England*, four thouſand whereof were to be Horſe, and to be landed in *Eſſex*; he had not ſo little Skill in military Affairs, as to direct four thouſand Horſe to land in that County, full of Lanes, Ditches, and Marſhes: He ſhould have choſen ſome other County, if he had been engaged in any ſuch Enterprize: And, though he was charged with an Intention to join ſuch foreign Troops, it could not be proved, he had made any Proviſion for that End; that he had conſulted any of his Friends about it; levied Men, or provided Horſes, or Arms, for that Purpoſe.

He inſiſts, he was unprepared for an Inſurrection.

He confeſſed alſo, that *Barker* did bring him a Letter from the Pope, which begun with theſe Words, *Dilecti Fili*, *Salutem*, with which he was offended, and asked what he had to do with him, who was an Enemy to his Religion and Country; and *Barker* excuſed himſelf, and ſaid, *Rodolph* had procured that Letter for his own Credit.

Confeſſes his receiving a Letter from the Pope.

The Duke alſo acknowledged, his being concerned in ſending the Money that was intercepted; but ſaid, he did not know it was for the Rebel Lords; and that it could not be Treaſon to ſend Money to the Duke of *Caſtelle-Roy*, and the Lord *Herries*, Subjects of *Scotland*, which Kingdom was at Peace with the Queen of *England*. However, the Duke was found GUILTY OF HIGH TREASON, by the unanimous Opinion of his Peers.

And his ſending Money to Scotland.

It is evident from the Duke's Confeſſion, that he had renewed the Treaty of Marriage with the Queen of *Scots*, after he had promiſed Queen *Elizabeth*, he would have no further Concern with her; that he had alſo treated with the proper Agent to procure Money for her from the Pope and *Spain*; and that he had received a Letter from the Pope, relating to that Affair; and laſtly, that he had been concerned in ſending Money to the *Engliſh* Rebels in *Scotland*; and this was interpreted both by the Queen's Counſel, and the Peers, his Judges, to be with an Intention to depoſe Queen *Elizabeth*, and to uſurp her Throne; which was certainly High Treaſon, if his Judges were ſatisfied that was his Intent. However, if the Duke had not confeſſed theſe Facts in Court, there was no Evidence produced againſt him ſufficient to convict him; for by the 5 & 6 of *Edw.* VI. two Witneſſes, at leaſt, ought to have given their Evidence, *Viva Voce* in Court; though the Queen's Counſel denied there was any ſuch Law in Force. The Duke alſo had very hard Meaſure, that his Friends were not ſuffered to come near him while he was in Priſon, nor any Opportunity allowed him to prepare for his Defence; neither was he permitted to produce any Witneſſes or Proofs of his Innocence. This ſhews, that the Court acted very arbitrarily, even in Queen *Elizabeth*'s Reign, and that the Subject had ſcarce any Chance for his Life, where he was accuſed of High Treaſon. Even Acts of Parliament in the Priſoner's Favour were not regarded by the Court: Every Thing was to be urged in Behalf of the Crown, and nothing ſuffered to be offered in Behalf of the Priſoner.

Remarks on the Duke of Norfolk's *Trial.*

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Other Peoples Letters, and Copies of Letters, were read againſt him, in which he had no Concern; and that, without any Proof being made that thoſe Letters were written by the Perſons they were pretended to be written by. Nay, the Counſel were permitted to repeat the Queen's Converſation, and to apply it as Evidence againſt the Priſoner, without the Solemnity of an Oath; and hearſay Evidence, what the Witneſſes had heard other People ſay of the Priſoner, was admitted as Evidence; all which is held illegal at this Day; and the Law was much the ſame in that Reign as it is now: Nothing but the different Opinions of the Lawyers of thoſe Days, and ours, in *interpreting* the Laws and Statutes of the Realm, ſeems to make that wide Difference there appears between the Proceedings of the Courts of Juſtice, at that Time and this.

As to that Objection of the Duke's, That a *Scot* ought not to be admitted a Witneſs againſt an *Engliſhman*, or an *Engliſhman* againſt a *Scot*: It ſeems this was the Practice upon the Borders, where the two Nations were in perpetual Hoſtility, and therefore they were not deemed competent and impartial Witneſſes againſt each other there; but this Rule does not appear to have been extended to the whole Nation by either Side.

As to the Occaſion of proſecuting the Duke with this Violence; Hiſtory informs us, That the *Scotiſh* Queen, finding there was little Hopes of obtaining her Liberty from the Queen of *England*, ſent Letters to the Duke of *Norfolk*, the Pope, and the King of *Spain*, to endeavour to procure her Enlargement by Force, or otherwiſe; which Letters were copied over by *Hickford*, the Duke of *Norfolk*'s Secretary, and then forwarded to *Spain* by *Ridolph*, or *Rodolph*, the Pope's Agent, who had continued ſeveral Years in *England*, under the Character of an *Italian* Merchant; and this Man, 'tis ſaid, had propoſed to the Duke of *Norfolk*, the bringing about a Revolution in *England*, and the procuring Money and Forces of the Pope, and the King of *Spain*, to effect it.

The Biſhop of *Roſs*, who reſided at *London*, as Ambaſſador of the Queen of *Scots*, propoſed to the Duke of *Norfolk*, about the ſame Time, the ſeizing of Queen *Elizabeth*'s Perſon, and making her their Priſoner; on which he ſuggeſted, a Majority of the Nation would declare for the Queen of *Scots*; and, though the Duke rejected this Motion, he thought fit to conclude the Treaty of Marriage, however, with the Queen of *Scots*; and thereupon *Rodolph* was diſpatched to the Pope, and the King of *Spain*, to deſire their Aid, as has been related. *Rodolph*, arriving in *Flanders*, and meeting one *Bayliff*, a Servant of the Queen of *Scots*, going to *England*, ſent ſeveral Letters by him to the Duke of *Norfolk*, the Biſhop of *Roſs*, and others in the Secret; and *Bayliff*, with his Packet, being ſeized at *Dover*, on his Return, the Government thereby diſcovered there was a Plot on Foot; and, apprehending the Biſhop of *Roſs*, and *Hickford*, the Duke's Secretary, they were

1571. 14 Eliz.

were more fully convinced of it, by their Confeſſions, and the Copies of the Letters that had been ſent to the Pope, and the King of *Spain*, which the Secretary produced.

It appeared alſo, that the Duke's Secretary had been employed in tranſmitting 1500 *l.* to the Rebels in *Scotland*, which was intercepted; ſo that the Miniſtry did not want ſufficient Proof againſt the Duke. All that they are cenſured for, is the illegal Manner of proſecuting him for a Crime, which might very eaſily have been proved againſt him in a legal Way. The Duke, himſelf, did not deny his ſoliciting foreign Aid; only ſaid, in his Excuſe, he had no Deſign againſt Queen *Elizabeth* and the Realm; that he only intended to deliver the Queen of *Scots*, and reſtore her to the Throne of *Scotland*.

Conſpiracies to ſet the Duke at Liberty.

However, though there was little Room to doubt, of the Duke's Guilt, and he had been convicted by his Peers, without one diſſenting Voice, the Queen ſeemed inclined to ſpare him, and reſpited his Execution for ſeveral Months; till ſome Conſpiracies having been diſcovered, to reſcue the Duke, and ſet him at Liberty, which were fomented by the *Scotiſh* Queen, her Majeſty thought fit to call a Parliament, and adviſe with them, concerning her own and the national Security; and the Houſes immediately reſolved, That the Execution of the Duke of *Norfolk* was now become neceſſary,

The Parliament addreſs the Queen for his Execution.

and addreſſed her Majeſty accordingly: Whereupon the Duke was ordered to be beheaded, on the 2d of *June*, almoſt five Months after his Sentence.

1571. 14 Eliz.

When he came to the Scaffold, he acknowledged, he had been juſtly condemned by his Peers, and that he had treated with the Queen of *Scots* a ſecond Time, after he had ſolemnly promiſed her Majeſty, he would not; for which, his Conſcience, he ſaid, was diſturbed; but declared, he never approved the Deſigns of the Pope, and King of *Spain*, or the Rebellion in the North; and was ſo far from attempting to introduce Popery, that he was never popiſhly affected, ſince he had any Taſte for Religion. Having ended his Speech, he prepared himſelf for the Block, without any Signs of Fear; and his Head was ſevered from his Body.

He acknowledges his Guilt.

Dies a Proteſtant.

Soon after the Duke's Execution, her Majeſty ſent Commiſſioners to the *Scotiſh* Queen, to expoſtulate with her, concerning her repeated Practices againſt her Government; and, particularly, for treating of a Marriage with the Duke of *Norfolk*, and endeavouring to reſcue him out of Priſon.

To which that Princeſs anſwered, She was actually contracted to the Duke of *Norfolk*, and thought herſelf obliged to endeavour to obtain his Freedom, *as ſhe was his Wife.*

The Queen of Scots *affirms ſhe was his Wife.*

The Trial of ROBERT HICKFORD.

1571. 14 Eliz.

Hickford, *the Duke of* Norfolk's *Secretary arraigned.*

THE next Thing we meet with in the State Trials, is the Arraignment of *Robert Hickford*, the Duke of *Norfolk*'s Secretary, on the 9th of *February*, 1571. 14 *Eliz.* for High Treaſon, in being concerned in the Treaty with the Pope, and the King of *Spain*, and diſpatching *Rodolph* to them, to demand Supplies for the Queen of *Scots*; and alſo for tranſmitting Money to the Rebels in *Scotland:* Both which *Hickford* confeſſed, and his Confeſſion being recorded, Judgment was pronounced againſt him as a Traitor; but, as he had been made an Evidence againſt his Lord, his Life was ſpared.

1571. 14 Eliz.

Condemned, but pardoned.

The Trial of Doctor WILLIAM PARRY.

1584. 26 Eliz.

The Arraignment of Doctor Parry *for a Conſpiracy againſt the Queen's Life.*

THEN follows the Arraignment of *William Parry*, Doctor of Laws, for *High-Treaſon*, the 25th of *Feb.* 1584. 26 *Eliz.*

The Indictment ſet forth, that the Priſoner had traiterouſly conſpired the Death of the Queen, and the Subverſion of the Government, and the true Religion; that he had begged Abſolution of the Biſhop of *Rome*, and received Letters from Cardinal *de Como*, ſignifying, that the ſaid Biſhop of *Rome* approved his Intentions, abſolved him from all his Sins, and encouraged him to proceed in his Enterprize; and that the Priſoner had moved *Edmund Nevil*, to aſſiſt him, in aſſaſſinating the Queen.

1584. 26 Eliz.

To this Indictment the Priſoner pleaded GUILTY. At which Time, alſo, his Confeſſion before the Lord *Hunſdon* was read, wherein he declared, that he looked upon the Reſolution he had taken, of killing the Queen, to be lawful, and even meritorious; and his Confeſſion being recorded, Judgment was pronounced againſt him as a Traitor.

Pleads Guilty.

The Priſoner, being a Member of Parliament, was executed in the Palace-Yard, in the Preſence of both Houſes.

His Execution before the two Houſes of Parliament.

His Deſign of murdering the Queen, was firſt diſcovered by *Edmund Nevil*, whom he deſired to aſſiſt him in the Aſſaſſination.

The Trial of ANTHONY BABINGTON, &c.

1586. 28 Eliz.

Babington, &c. *arraigned for High Treaſon.*

THE next Proceeding in the State Trials, is the Arraignment of *Anthony Babington*, *Chidiock Titchburne*, *Thomas Salisbury*, *Robert Barnwell*, *John Savage*, *Henry Donn*, and *John Ballard*, for *High-Treaſon*, the 13th & 14th of *Sept.* 1586. 28 *Eliz.*

They were charged with a Conſpiracy, to aſſaſſinate her Majeſty; with attempting to deli-

1586. 28 Eliz.

ver the Queen of *Scots* out of Cuſtody, procuring foreign Enemies to invade the Realm, and inciting an Inſurrection, to join the Enemy.

They plead Guilty.

To which Indictment they all pleaded GUILTY, and Sentence was pronounced againſt them as Traitors.

More of the Conſpirators tried.

The following Day, *viz.* the 15th of *September*, 1586. 28 *Eliz.* their Accomplices, *Edward Abington*, *Charles Tilney*, *Edward Jones*, *John Travers*, *John Charnock*, *Jerome Bellamy*, and *Robert Gage*, were arraigned for the like Treaſon, *viz.* conſpiring the Death of the Queen, the releaſing the Queen of *Scots*, inviting Foreigners to invade the Realm, and inciting an Inſurrection; and were all convicted on their own Confeſſions, or the Confeſſions of their Accomplices: But we find no more than Minutes of theſe Trials, which were very imperfectly taken; only it appears they were all

The Conſpirators condemned.

condemned as Traitors; and that *Jones*, *Travers*, *Bellamy*, and *Gage*, were convicted only of concealing and harbouring the Aſſaſſins, and were to have had no Share in the intended Aſſaſſination themſelves.

Remarks on theſe Proceedings.

Since theſe Proceedings are ſo very deficient, I ſhall endeavour to ſupply, in ſome meaſure, what is wanting, in Relation to the Diſcovery of this Plot, and the Trials of the Conſpirators, from Hiſtory.

The Prieſts in the *Engliſh* Seminary at *Rheims*, had, we are informed, inculcated into their Pupils, that it would be a meritorious Act to aſſaſſinate an excommunicated Prince; and that thoſe, who loſt their Lives in ſuch an Attempt, ought to be deemed Martyrs; and had ſo inſpired *Savage*, a bold, enterprizing, young Fellow, with theſe Principles, that he vowed to kill Queen *Elizabeth*.

About the ſame Time, *John Ballard*, a Prieſt of the ſame Seminary, having viſited the *Catholicks* in *England* and *Scotland*, to ſee how they ſtood affected; and returning to *France*, propoſed to *Mendoza*, the *Spaniſh* Ambaſſador there, and to the *Engliſh* Exiles, the invading *England* with a Body of *Spaniſh* Troops, while the Queen's Forces were abſent in *Holland*; which being approved by all, *Ballard* was ſent to *England* again, to ſee what Forces the *Engliſh Catholicks* could raiſe, to join the *Spaniards*.

Babington, *the chief Conſpirator.*

Ballard, on his Arrival in *England*, meeting with *Anthony Babington*, a Gentleman of Quality and Fortune, and entirely devoted to the Intereſt of the Queen of *Scots*, acquainted him with the intended Invaſion. To which *Babington* anſwered; The Invaſion would ſignify nothing, as long as Queen *Elizabeth* lived. To which *Ballard* replied; She would not live long; for *Savage* had vowed to kill her: But *Babington* ſaid, ſo weighty a Buſineſs ought not to be truſted to *Savage* alone,

Six Gentlemen vow to aſſaſſinate the Queen.

and propoſed ſix Gentlemen, of whom *Savage* ſhould be one, to perform this tragical Execution, as he called it, and made ſome Improvements alſo, in the Project, for an Invaſion, and the ſetting the Queen of *Scots* at Liberty; and, ſoon after, wrote a Letter to that Princeſs, wherein he gave her an Account, of his Conference with *Ballard*, and of the ſix Gentlemen, that were pitched upon for the intended Aſſaſſination; telling her, that he, with an hundred more, would, at the ſame Time, ſet her at Liberty: And deſired the heroical Actors, in this Enterprize, or their Poſterity, if they did not ſurvive, might be well rewarded.

1586. 28 Eliz.

Queen of Scots *Letter to* Babington.

To this Letter *Babington* received an Anſwer, from the Queen of *Scots*, wherein ſhe adviſes him, to uſe great Caution; and that the Aſſociation, they propoſed to enter into, ſhould be under Pretence of their Fears of the *Puritans:* She adviſes alſo, that there might be an Inſurrection in *Ireland*, at the ſame Time; that the Earls of *Arundel* and *Northumberland* ſhould be prevailed on to engage in the Affair; and, that Lord *Paget*, and the Exiles, ſhould come over to *England*; and, having propoſed ſome feaſible Ways to reſcue her from her Impriſonment, ſhe ordered *Babington*, to promiſe the ſix Gentlemen Rewards for their Service.

The Conſpirators betrayed by a Spy.

Babington, afterwards, drew the Lord *Windſor*'s Brother, and ſeveral other Gentlemen of Quality, into the Conſpiracy; but among them, it ſeems, was one *Polly*, a Spy of Secretary *Walſingham*'s, who is thought to have revealed ther Secrets from Time to Time, and to have puſhed theſe young Gentlemen upon this deſperate Attempt. The ſix, who were ſelected for the Aſſaſſination, took an Oath, to perpetrate it; and the Conſpirators met frequently in St. *Giles*'s *Fields*, and in St. *Paul*'s *Church*; and ſometimes at Taverns, where they had Entertainments, encouraged each other, and gloried in the Enterprize they were about to undertake; applauding thoſe Gentlemen who had lately ſurpriſed the King of *Scots* at *Sterling*, and *Gerard*, the *Burgundian*, who had aſſaſſinated the Prince of *Orange*; and the Aſ-

The Pictures of the Conſpirators drawn, and ſhewn the Queen.

ſaſſins had the Vanity to have their Pictures drawn with *Babington*, the prime Mover of the Plot, in the Middle of them; from whence it obtained the Name of BABINGTON's CONSPIRACY.

Theſe Pictures, it is ſaid, being privately ſhewn the Queen, before the Painter had finiſhed them, ſhe ſaid, ſhe did not remember to have ſeen any of the Gentlemen, they were drawn for, except *Barnwell*, who had often attended her on a Suit of the Earl of *Kildare*'s; and, ſeeing him afterwards, as ſhe was taking a Walk, ſhe beheld him, ſays *Cambden*, with an undaunted Countenance, and turning to *Hatton*, Captain of her Guard, ſhe ſaid, *Am I not finely guarded, that have not a Man in my Company that wears a Sword?* And *Barnwell*, afterwards, acquainted his Accomplices, how eaſily the Queen might have been taken off, if the reſt of the Conſpirators had been there.

The Conſpirators fly and are taken.

In the mean Time, the Government, being acquainted with every Step they took, ſet Spies, to obſerve their Motions: Which the Conſpirators, by ſome Means, diſcovered, and fled into the Country; but were ſoon after taken, and brought to Town again; and being arraigned (as has been related above) ſix of them confeſſed their Guilt, declaring, that they were perſuaded by *Ballard*, the Prieſt, to believe, that it was lawful to kill the Queen, becauſe ſhe ſtood excommunicated by the Pope. But, to proceed: On the 27th of *September*, 1586. about ten Days after Sentence pronounced againſt them,

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The Execution of Babington, and the reſt of the Conſpirators.

them, *Anthony Babington*, *Chidiock Titchburne*, *Thomas Salisbury*, *Robert Barnwell*, *John Savage*, *Henry Donn*, and *John Ballard*, ſeven of the Conſpirators, were hanged on a Gallows, erected for that Purpoſe, in St. *Giles*'s *Fields*; and, being cut down alive, their Bowels were taken out with unuſual Cruelty, ſays *Cambden*. Six of them died very penitent, and begged Pardon of God, and the Queen; but *Babington* endeavoured to terrify the People, by threatening them, that his Blood would ſoon be revenged on them. The next Day, *Edward Abington*, *Charles Tilney*, *Edward Jones*, *John Travers*, *John Charnock*, *Jerome Belamy*, and *Robert Gage*, were executed; but the Queen, having been acquainted how cruelly the former Priſoners had been uſed, gave Orders, that theſe ſhould have more Mercy ſhewed them; and, accordingly, they were all ſuffered to hang till they were dead, before they were cut down: Theſe, alſo, expreſſed their Sorrow for their Crimes, and exhorted the *Roman* Catholicks, not to endeavour the Reſtoration of their Religion by Force of Arms. Moſt of the Sufferers, it is obſerved, were Gentlemen of good Families.

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1586 28 Eliz.

The Trial of the Queen of Scots.

Proceedings againſt MARY Queen of *Scots*, for a Conſpiracy againſt Queen ELIZABETH, before the Lord Chancellor *Bromley*, and other Commiſſioners, appointed by her Majeſty to ſit in Judgment on the ſaid *Scotiſh* Queen, at *Fotheringay* Caſtle, in *Northamptonſhire*, 12 *Octob.* 1586. 28 *Eliz.*

1568 28 Eliz.

The Occaſion of it.

THERE having been ſeveral Conſpiracies, ſet on Foot by the *Roman* Catholicks, againſt Queen *Elizabeth*, with a View of advancing the Queen of *Scots* to the Throne, and, thereby, reſtoring their Religion, the Nation had voluntarily entered into an Aſſociation, for the Safety of the Queen's Perſon, obliging themſelves, by their Oaths, to revenge her Majeſty's Death, on thoſe who ſhould be Authors of it. Which Aſſociation was approved, and confirmed, by a Statute made the 27th of *Eliz. Anno* 1585. And it was alſo, further enacted, That, if any Invaſion, or Rebellion, ſhould happen in any Part of her Majeſty's Dominions; or any Attempt ſhould be made, to the Hurt of the Queen's Perſon, by, or for, any Perſon, that ſhould pretend a Title to the Crown, after her Majeſty's Deceaſe; or, if any Thing ſhould be compaſſed, or imagined, tending to the Hurt of her Majeſty's Perſon, with the Privity of any one, that might pretend a Title to the Crown: Her Majeſty, by her Commiſſion under the Great-Seal, directed to the Lords, and others, of her Privy-Council, and to ſuch other Lords as ſhould be named by her Majeſty, amounting to twenty-four, at leaſt, might authoriſe them to examine all, and every, ſuch Offences, and to give Sentence therein, on the Evidence that ſhould be produced before them. And the Queen of *Scots* being ſuſpected to be at the Bottom of *Babington*'s Conſpiracy, (already mentioned) a Commiſſion was iſſued, for the Trial of the *Scotiſh* Queen, by Virtue of the ſaid Act; being directed to the Archbiſhop of *Canterbury*, the Lord Chancellor, the Lord Treaſurer, and above forty Noblemen more, to whom were added five of the Judges.

An Aſſociation entered into.

Confirmed by Parliament.

An Act to authoriſe this Trial.

A Commiſſion to try the Queen of Scots.

The Commiſſioners meet at Fotheringay.

The Archbiſhop did not act in this Commiſſion: But the Lord Chancellor, and thirty-ſix of the Commiſſioners, aſſembling at *Fotheringay* Caſtle the 11th of *October*, gave notice to the *Scotiſh* Queen, of their Arrival, the next Day, requiring her to appear before them: To which Meſſage ſhe anſwered, She was an Independent Princeſs, and the Commiſſioners could have no Juriſdiction over her: However, having made a Proteſt, that ſhe owed no Subjection to the Crown of *England*, ſhe did, at length, agree to appear before them (ſhe ſaid) to manifeſt her Innocence to the World, and, that ſhe might not lie under ſo foul an Aſperſion, as the Conſpiracy to aſſaſſinate the Queen of *England*.

The Charge againſt the Queen of Scots, *and the Proofs of it.*

Then the Queen's Counſel charged her, with being privy to *Babington*'s Conſpiracy, and, with approving and encouraging it: For Proof whereof, they produced Copies of *Babington*'s Letters, and his Examination, wherein he declares, ſhe wrote Anſwers to them; in one of which, ſhe commended, and approved, his Deſign: A Copy of a Letter, from the Lord *Charles Paget*, to her, alſo was read (which *Curl*, one of her Secretaries, had atteſted, ſhe received) reciting a Conference between the ſaid *Paget*, *Mendoza* the *Spaniſh* Ambaſſador, and *Ballard* the Prieſt, one of the Conſpirators, importing, that an Invaſion was intended, in order to ſet the Queen of *Scots* at Liberty: The Examinations of her Secretaries, *Naw*, and *Curl*, alſo were read, to prove the Letters that paſſed between her and *Babington*, relating to the Conſpiracy.

The Depoſitions of her Secretaries, the principal Evidence.

She was charged alſo, with allowing a Penſion to *Morgan*, who ſent over *Parry* (already mentioned) to kill the Queen.

Her Letters to the Lord *Charles Paget*, alſo, were read, wherein ſhe declares, That the *Spaniard* had no other Way to reduce the *Netherlands*, but by ſetting a Prince on the Throne of *England*, that might be ſerviceable to him; and entreats *Paget*, to haſten the Forces that were to invade *England:* A Letter of Cardinal *Allen*'s, to the Queen of *Scots*, alſo was read, wherein he ſtiles her, *His Dread Sovereign*; and acquaints her, that her Affairs were committed to the Care of the Prince of *Parma*.

Then ſhe was charged, with a Deſign of transferring her Right to the Succeſſion of the Crown to the *Spaniard:* Upon which the Queen's Counſel harangued for ſome Time; obſerving, how precarious all their Honours, Liberties, and Properties, muſt be, if ſuch a Conveyance ſhould take Place. To which the Lord Treaſurer anſwered, That the Kingdom of *England* could not be ſo transferred to a Fo-

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a Foreigner; but muſt deſcend according to the Laws of Succeſſion.

The Queen of Scots *Defence.*

To this Charge the *Scotiſh* Queen anſwered, That ſhe knew not *Babington*, or ever wrote to, or received Letters from him; nor, had ſhe ever plotted the Deſtruction of the Queen: That they ought to produce ſomething under her own Hand, to make good the Charge: That many Letters, indeed, had been ſent to her, by People unknown, offering their Aſſiſtance; but ſhe had excited no Man to commit any Offence; and, being ſhut up in Priſon, could neither know, or prevent, what others attempted: That *Babington* might have confeſſed ſuch Things, to ſave himſelf: That ſhe had, indeed, done her beſt Endeavour to recover her Liberty, which Nature, itſelf, allowed; and ſollicited her Friends for that End: But that ſhe would not purchaſe the Kingdom with the Death of the meaneſt Man, much leſs of the Queen: That it was an eaſy Matter, to counterfeit the Cyphers, and Characters, of others; and, ſhe feared, this had been done by *Walſingham*, to deſtroy her, who had practiſed both againſt her Life, and her Son's, as ſhe was informed: Whereupon *Walſingham* proteſted, he had no Malice againſt her; but had acted as the Duty of his Poſt required.

Inſiſts, that they ought to have proved her Hand to the Letters.

And that the Witneſſes ought to have given their Evidence in her Preſence.

Then ſhe inſiſted, that her Secretaries, *Naw* and *Curl*, ought to have been produced in Court, and given their Evidence in her Preſence; ſince the whole Streſs of the Proof ſeemed to reſt upon their Teſtimony: They might alſo, ſhe obſerved, have written what ſhe never dictated; and Letters might come to them, which ſhe never ſaw: However, were they produced, ſhe was confident, they would acquit her of all Guilt.

As to her allowing a Penſion to *Morgan*, who ſent over *Parry* to kill the Queen, ſhe ſaid, ſhe always forbad him encouraging any ſuch Attempts; though, ſhe confeſſed, ſhe had given him a Penſion, on Account of ſome Services he had done her: And, on the other Hand, ſhe obſerved, that the Queen of *England* made no Scruples of allowing Penſions to her Enemies in *Scotland*.

She laments, Queen Elizabeth *would accept of no Expedients.*

She lamented, that the moſt reaſonable Conditions ſhe could propoſe, to Queen *Elizabeth*, had always been rejected; even, when ſhe offered to deliver her own Son, and the Duke of *Guiſe*'s Son, for Hoſtages and Pledges, that neither the Kingdom of *England*, or the Queen, ſhould receive any Damage from her being at Liberty. She complained, that her Honour and Reputation had been called in Queſtion, and inſulted, by Foreign Lawyers; who, by wretched Concluſions, drew every Circumſtance into a Conſequence: But, that Princes, anointed and conſecrated, were not Subject to the Laws of one particular Country, as private Perſons were.

The Lord Treaſurer's Reply.

To this the Lord Treaſurer replied, That ſhe, or the *Scots*, were the Occaſion, that all ſhe had propoſed to the Queen failed of Succeſs; for the *Scotiſh* Lords abſolutely refuſed to deliver up her Son, as an Hoſtage; and, while the laſt Treaty was negotiating, *Morgan*, a Dependant of her's, privately ſent over *Parry* to murder the Queen: And aſſerted, that the Commiſſioners had full Authority, to call her to an Account, for her Practices againſt the Queen and Kingdom.

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She proceeds in her Defence.

Then the Queen of *Scots* proceeded in her Defence, and ſaid, That, as to Cardinal *Allen*, ſhe held him to be a Reverend Prelate of the Church; but in what Quality ſhe was eſteemed by the Pope, or foreign Princes, ſhe knew not; nor could ſhe prevent their ſtiling her *Queen of England*, in their Letters: She did not deny her treating with the *Spaniards*, to convey her Right in the Kingdom to him; but ſaid, all her Hopes in *England* being deſperate, ſhe was fully reſolved not to reject Foreign Aid; and concluded, with requiring, ſhe might be heard in full Parliament, or, at leaſt, that ſhe might ſpeak with the Queen in Perſon; not doubting but ſhe would have ſome Regard to a Sovereign Princeſs, her near Relation.

Requires to be heard in Parliament. Or before the Queen.

Then the Commiſſioners adjourned to the 25th of *October*, to the Star-Chamber in *Weſtminſter*, when they pronounced the following Sentence.

Sentence pronounced againſt her.

That, after the firſt Day of *June*, in the 27th Year of the Queen, and before the Date of their Commiſſion, divers Matters had been compaſſed, and imagined, by *Anthony Babington*, with the Privity of *Mary* Queen of *Scots*, pretending a Title to the Crown of *England*, and tending to the Hurt, Death, and Deſtruction of the Royal Perſon of the Queen: And, that the ſaid *Mary*, pretending a Title to the Crown of *England*, had alſo, herſelf, within the Time aforeſaid, compaſſed, and imagined, divers Matters, tending to the Hurt, Death, and Deſtruction of the Royal Perſon of the Queen, contrary to the Statute of the 27th of *Eliz.*

The Parliament addreſs the Queen, for the Execution of the Queen of Scots.

The Parliament, meeting the 29th of the ſame Month of *October*, approved the Sentence of the Commiſſioners, and addreſſed her Majeſty, that, as well in reſpect of the Continuance of the true Religion, and the Safety of her Royal Perſon, as in regard to the Preſervation and Defence of her Subjects, ſhe would be pleaſed to give her ſpeedy Orders, that the ſaid Sentence might be publiſhed by Proclamation, and Directions given, for farther Proceedings againſt the *Scotiſh* Queen in Purſuance of the aforeſaid Statute; for that, upon adviſed and great Conſultation, they could not find there was any poſſible Means of providing for her Majeſty's Safety, but by the juſt and ſpeedy Execution of the ſaid Queen. And that, if the ſaid Sentence was not ſpeedily executed, they deſpaired of the Continuance of the true Religion, of her Majeſty's Life, and the Safety of her faithful Subjects.

The Queen's Anſwer.

To this Addreſs, the Queen anſwered, That, if her Life alone depended upon it, and not the Safety, and Welfare, of her People, ſhe would moſt willingly pardon her. Nay, if *England* might, by her Death, attain a more flouriſhing Eſtate, and a better Prince, ſhe would moſt gladly lay down her Life; for, it was only for her People's Sake, ſhe deſired to live. They had, ſhe ſaid, by the laſt Act of Parliament, brought her to a very great Strait, that ſhe muſt give Orders for her Death, who was a Princeſs moſt nearly allied to her, in Blood, and, whoſe Practices againſt her had ſo overwhelmed her with

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with Sorrow, that ſhe had been glad to be abſent herſelf from this Parliament, leſt ſhe ſhould encreaſe her Grief by hearing it ſpoken of, and not out of Fear of Danger, as ſome thought; though it was not long ſince, ſhe had ſeen, and read, an Oath, wherein ſome had bound themſelves to kill her within a Month. However, ſhe hoped they did not expect any preſent Reſolution; for, in Matters of leſs Moment, ſhe uſed to deliberate long.

A ſecond Addreſs, for the Execution of the Queen of Scots.

About a Fortnight after, her Majeſty ſent a Meſſage to both Houſes, deſiring, they would deviſe ſome Means, that the Queen of *Scots* Life might be ſpared: Which occaſioned a ſecond Addreſs; wherein they again repreſented to her, that her Majeſty's Safety could not poſſibly be ſecured, ſo long as the *Scotiſh* Queen lived; and, therefore, renewed their Inſtances for her ſpeedy Execution.

The Sentence againſt the Queen of Scots, *proclaimed all over* England.

Still the Publication of the Sentence was deferred, on the Interceſſion of the *French* Ambaſſador: But, at length, on the Inſtances of ſome Courtiers, it was proclaimed in *London*, and in all the Counties of *England*; and the Lord *Buckhurſt*, and *Beal*, one of the Clerks of the Council, were ſent to the Queen of *Scots*, to acquaint her with it, and perſuade her to acknowledge her Offences, and expiate them before her Death by Repentance: They let her know, at the ſame Time, that, as long as ſhe lived, the eſtabliſhed Religion in *England* muſt be precarious; at which ſhe triumphed, and gave God Thanks, that ſhe was eſteemed capable of reſtoring the true Religion in this Iſland.

The Queen under great Difficulties, in Relation to her Execution.

The Queen, *Cambden* obſerves, was extremely perplexed, how to act in this Affair, News being brought her, daily, of intended Invaſions, Aſſaſſinations, or Inſurrections: Whereupon ſhe thought fit to give orders to *Daviſon*, one of her Secretaries of State, to draw a Warrant for the Queen of *Scots* Execution, and have it paſſed under the Broad-Seal, to lie in Readineſs, in caſe of any further Attempts againſt her Life, or the Peace of the Kingdom. But the Queen, it is ſaid, altering her Mind the next Day, told *Daviſon*, ſhe would not have the Warrant drawn. To which he anſwered, it was already drawn; and had paſſed the Great-Seal, in purſuance of her Commands; at which ſhe ſeemed ſurpriſed, and checked him for making ſo much Haſte, ordering him, not to communicate the Warrant to any one: But *Daviſon* a great Zealot in Religion, imagining the Fate of the Kingdom depended on the Execution of the Queen of *Scots*, acquainted the reſt of the Council, that the Warrant for her Execution had paſſed the Great-Seal without informing them, that her Majeſty had ſince altered her Mind: Whereupon, the Lords, to whom the Warrant was directed, were ordered by the Council, to repair to *Fotheringay*, and ſee it executed; And the Queen of *Scots* was accordingly executed in the Hall of the Caſtle of *Fotheringay*, on the 8th of *February*, 1586-7. in the 46th Year of her Age; when ſhe expreſſed a great Contempt of Death, and even looked upon it as her great Happineſs, that ſhe was brought to ſuffer for her Steadineſs to Religion; ſtill denying ſhe had ever practiſed any Thing againſt the Life of the Queen.

A Warrant, for the Execution of the Queen of Scots, *paſſes the Broad Seal.*

The Privy Council order the Execution of the Queen of Scots, *without the Knowledge of Queen* Elizabeth.

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When her Majeſty heard of the Execution of the Queen of *Scots*, ſhe appeared to be in a great Conſternation; but, having, after ſome Time, recovered herſelf, ſhe reprimanded the Council ſeverely, and commanded them out of her Sight. Even the Lord *Burleigh* Treaſurer, was baniſhed the Court; as appears by ſeveral Letters in *Stripe*'s Collections, wherein he begs to be re-admitted to Favour: And *Daviſon*, the Secretary, was tried in the Star-Chamber, for a Miſdemeanor, before the two Archbiſhops; the Earls of *Worceſter* and *Cumberland*; the Lord *Grey*; the two Chief Juſtices; the Chief Baron, and ſeveral other Commiſſioners, who ſentenced him to pay a Fine of ten thouſand Marks, and to be impriſoned during the Queen's Pleaſure.

They are baniſhed her Preſence.

Daviſon, *the Secretary of State, fined for his Preſumption.*

Remarks on the Trial, and Execution, of the Queen of Scots.

As to the Juſtice, or Equity, of theſe Proceedings, againſt the Queen of *Scots*, It ſeems generally admitted, that, as ſhe was a Foreigner, a Sovereign Princeſs, and fled to Queen *Elizabeth* for Protection, ſhe was unjuſtly impriſoned, and more unjuſtly tried and condemned, by the Laws of *England*, to which ſhe could not be ſubject, owing neither a natural, or local Allegiance to this Crown, but detained Priſoner here againſt her Will: And, that it was lawful, after this Violence to her Perſon, to endeavour by all Means, to free herſelf from her Impriſonment: Nor is there any doubt, but ſhe endeavoured to obtain her Freedom, by inviting Foreign Powers to invade the Realm, and inciting Inſurrections againſt Queen *Elizabeth*; which muſt have ended in the Deſtruction of the Queen, and the Proteſtant Religion, if they had ſucceeded. The Nation, therefore, purely for Self-Preſervation, without conſidering, whether the Fact was ſtrictly juſt, ſeem to have been almoſt unanimous, in taking away the Life of this Princeſs, to prevent their own unavoidable Ruin, in caſe ſhe ſurvived Queen *Elizabeth*.

Neither was it agreeable to the Laws of *England*, by which the Court pretended to try the Queen of *Scots*, to convict her upon the Depoſitions of Witneſſes, without producing them to her Face, that ſhe might have croſs-examined them: However, this ſeems to have been the Practice in other Trials: Neither *Throckmorton*, or the Duke of *Norfolk*, had the Witneſſes brought into Court to give their Teſtimony, but were condemned upon Depoſitions; though the 5th, and 6th of *Edw.* VI. expreſly requires, that there ſhould be two Witneſſes examined, *Viva Voce*, in Court, in the Priſoner's Preſence, where they are charged with Conſpiracies againſt the Government.

As to the executing the Queen of *Scots*, without Queen *Elizabeth*'s Knowledge, I am apt to think the Privy-Council were content to take the Odium of it from the *Queen*, and bear it themſelves; and, knowing *Daviſon* to be zealous for the Execution, put him into that Poſt, on purpoſe to ſerve their Turn, conſcious that he would not uſe all thoſe Precautions a Wiſe Man ought, on ſo critical an Occaſion. And though, I believe, the Queen did not care to give Orders, directly, for the Execution of the Queen of *Scots*, yet, ſhe was not diſpleaſed in her Heart, perhaps, that the Privy-Council had cauſed her to be executed without her Knowledge: Nor, is there any doubt, but the

1586. 28 Eliz. Privy-Council knew her Majeſty's Mind, and did not deſpair of recovering her Favour; though it was but decent for her Majeſty to reprimand them, and baniſh them her Preſence, for a Time, for their officious Haſte in a Matter of that Moment. 1586. 28 Eliz.

1587. 30 Eliz. Daviſon's *Trial.*

The Trial of WILLIAM DAVISON, Eſq; late one of her Majeſty's Principal Secretaries of State, for a Miſpriſion, and Contempt, in the Star-Chamber, before Sir *Chriſtopher Wraye* Knight, Lord Chief Juſtice of *England*, the Preſident; the Archbiſhops of *Canterbury* and *York*; the Earls of *Worceſter*, *Cumberland*, and *Lincoln*; the Lords *Grey* and *Lumley*; Sir *James Croft* Comptroller; Sir *Gilbert Gerrard* Maſter of the Rolls; Sir *Edmund Anderſon* Lord Chief Juſtice of the Common Pleas; Sir *Roger Manwood* Lord Chief Baron; and Sir *Walter Mildmay* Chancellor of the *Exchequer*, 28 *March*, 1587. 30 *Eliz.*

1587. 30 Eliz. Daviſon's *Trial.*

Defective. THE Editor of this Trial has not given us Part of the Bill, or Articles, that were preferred againſt Mr. *Daviſon*, in the Star-Chamber, or his Anſwer; but barely ſome Minutes of the Speeches of the Attorney-General, and the reſt of the Queen's Counſel, againſt him, on the Day of Trial; with a Summary of his Defence in Court.

The Charge. The Queen's Counſel, he tells us, charged Mr. *Daviſon*, with communicating the Warrant, for the Execution of the Queen of *Scots*, to the Privy-Council, contrary to her Majeſty's Directions; and, with informing them, that it was her Majeſty's Intention, it ſhould be ſpeedily executed; when he was conſcious, the Queen had no Intention, ſhe ſhould be executed; at leaſt, till further Orders: That her Majeſty particularly ſent Mr. *Killegrew* to him, commanding him, if the Warrant was not already ſealed, that it ſhould not be ſealed; and that, when he informed her, it was ſealed, ſhe checked him for his Haſte; and yet, he contemptuouſly cauſed a Warrant to be ſent down, for the Execution of the Queen of *Scots*, without her Majeſty's Privity.

The Evidence. The Evidence to prove this Charge was, Part of *Daviſon*'s Confeſſion, at his Examination, and the Lord Treaſurer's Teſtimony.

At his Examination he had acknowledged; that, when her Majeſty charged him to be Secret, he anſwered he would be as careful, and as ſecret, as was neceſſary: He confeſſed alſo, that Mr. *Killegrew* came to him, and told him, if the Warrant were not ſealed already, it ſhould not be ſealed; and that, after it was ſealed her Majeſty ſaid, What haſte? and, that he did not make her Majeſty privy to the ſending down the ſaid Warrant.

The Teſtimony the Lord Treaſurer gave, was, that he asked Mr. *Daviſon*, on his communicating the Warrant to him, if he knew what her Majeſty's Mind was, as to the Execution, and he anſwered, ſhe would have it go forward; and, that he told the reſt of the Council the ſame Thing, and thereby procured a Warrant to be ſent down, for the immediate Execution of the Queen of *Scots*.

Daviſon's *Defence.* *Daviſon* ſaid, in his Defence, that he had ever been faithful to her Majeſty, and never wittingly or willingly offended her: That the whole Realm had addreſſed her Majeſty, for the Execution of the Queen of *Scots:* That he conſidered the Danger her Majeſty was in, while ſhe lived: That the Inſtrument was complete, and had paſſed the Great-Seal, by her Majeſty's Directions; and, when ſhe delivered it to him, ſhe ſaid, *Now you have it, let me be troubled no more with it*; which, he thought, was a ſufficient Intimation of her Meaning; and, there being no direct Countermand, he thought the Inſtrument irrevocable: As to the Charge of Secrecy, he conceived her Majeſty's Meaning to be, that it ſhould be kept from the common and publick Knowledge, in Regard of the violent Attempts that might be made by the Queen of *Scots* Adherents, at ſuch a Time, if they knew the Warrant was ſigned for her Execution: He could not think ſhe deſigned to conceal it from the Council, when ſhe had ordered him to communicate it to Sir *Francis Walſingham*; and when ſhe had, herſelf, made the Lord Admiral Privy to it.

And, as to his ſending down the Warrant, he did it not without the Opinion of the Council: Beſides, in his own Judgment, the Times were very dangerous; and he ſhould have been ſeverely cenſured; at leaſt, if her Majeſty had come to any Misfortune, while he had concealed the Warrant: It was reported, that Forces were landed in *Ireland* and *Wales*; and, that there were Inſurrections in ſeveral Parts of the Kingdom: That *Fotheringay* Caſtle was broke open, and the Priſoners eſcaped: That *London* was fired, and her Majeſty aſſaſſinated; and, while the People were in the greateſt Conſternation at theſe Reports, her Majeſty might in reality have been murdered; and he ſhould have been held the principal Occaſion of it, if he had not communicated the Warrant for executing the Queen of *Scots*, to the Council.

Beſides, as her Majeſty had ſignified her Royal Aſſent, that ſhe ſhould be executed, it was not uſual to trouble the Queen about the Time and Place, and other Circumſtances: Theſe Matters were always left to the Council, and ought to be ſo, more eſpecially in this Caſe, becauſe ſhe had ſaid expreſly, *She would be troubled no more with it.*

The Opinion of the Court in this Caſe. The Court, in delivering their Opinions, generally agreed, that *Daviſon* had acted ſincerely, and according to the beſt of his Underſtanding; but ſtill held, that he had been guilty of a great Miſpriſion and Contempt, in communicating the Warrant to the Council, and cauſing the Queen of *Scots* to be executed, without her Majeſty's Privity. The Lord *Grey* ſeemed to excuſe his Conduct, and, in ſome meaſure, juſtified him. Had her Majeſty miſ-

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miſcarried, this Lord obſerved, and the Warrant been afterwards found ſigned and ſealed in Mr. *Daviſon*'s Hands, they ſhould have looked on him as a Traitor, and have torn him to Pieces; adding, that he ſhould then have thought him more worthy of ten thouſand Deaths, than now of the leaſt puniſhment; and yet he agreed with the reſt in their Sentence, *viz. That Mr.* Daviſon *ſhould be fined ten thouſand Marks, and be impriſoned during her Majeſty's Pleaſure.*

The Sentence.

The Paper called Daviſon's Apology.

The Editors of this Trial have added a Paper to it, which they tranſcribed from *Cambden*, and is uſually called *Daviſon's Apology*; but, whether it be genuine, or the Allegations in it deſerve to be credited, *Cambden* does not inform us.

In this Apology *Daviſon* makes the Queen ſay, That the Reaſon of her deferring the Execution ſo long, was, leſt ſhe might ſeem to have been violently, or maliciouſly, drawn thereto, though ſhe was not ignorant, how neceſſary it was; and that ſhe blamed *Pawlet* and *Drury*, the Queen of *Scots* Keepers, that they had not eaſed her of that Care; and wiſhed, that *Walſingham* would feel their Pulſes, touching that Matter; telling him, that, in the Judgment of ſome wiſe men, another Courſe might be taken; to which he (*Daviſon*) replied, that That Courſe was always beſt and ſafeſt, which was moſt juſt; but fearing ſhe would lay the Fault upon him (as ſhe had laid the putting of the Duke of *Norfolk* to Death upon the Lord *Burleigh*) he acquainted *Hatton* with the Matter; proteſting, that he would not plunge himſelf any deeper in ſo great a Buſineſs: That *Hatton* imparted it to the Lord *Burleigh*, and Lord *Burleigh* to the reſt of the Council, who all conſented to have the Execution haſtened; and every one vowed to bear an equal Share in the Blame, and ſent *Beal* (Clerk of the Council) down with the Warrant and Letters: That the third Day after, when her Majeſty, by a Dream, which ſhe told, of the Queen of *Scots* Death, ſeemed to waver in her Reſolution, he (*Daviſon*) asked her Majeſty, if ſhe had altered her Mind; to which ſhe anſwered, No; but another Courſe might have been deviſed; and demanded, at the ſame Time, whether he (*Daviſon*) had received an Anſwer from *Pawlet*; and that, having ſhewn her Majeſty *Pawlet*'s Letter, wherein he flatly refuſed to undertake that which ſtood not with Honour and Juſtice, ſhe waxed angry, accuſing him, and others (who had bound themſelves by the Aſſociation) of Perjury, and Breach of their Vows, as having promiſed great Matters for their Prince's Safety, and would perform nothing: *Yet*, ſaid ſhe, *there are, that will do it, for my Sake*; that he (*Daviſon*) thereupon ſhewed her Majeſty, how diſhonourable and unjuſt a Thing this would be, and into how great Danger ſhe would bring *Pawlet* and *Drury* by it: For, if ſhe approved the Fact, ſhe would draw upon herſelf, both Danger and Diſhonour, not without Cenſure of Injuſtice; and, if ſhe diſallowed it, ſhe would undo Men of great Deſert, and their whole Poſterity: And afterwards ſhe gave him a light Check, the ſame Day that the Queen of *Scots* was executed, becauſe ſhe was not yet put to Death.

The Editors obſerve farther, that *Freebairn*, in his Life of *Mary* Queen of *Scots*, p. 269. ſays, Queen *Elizabeth* ſent orders to *Pawlet*, on whoſe Obedience ſhe could reckon with Certainty, for committing of any Act of Barbarity, to make away with his Priſoner; and p. 270, 271, 272. inſerts a Letter from *Walſingham* and *Daviſon*, her two Secretaries, to Sir *Amias Pawlet* and *Drury*, with their Anſwer, which were found, as 'tis ſaid, among Sir *Amias Pawlet*'s Papers; Copies of which, tranſcribed from the Originals, were ſent to Doctor *Mackenzie*, by Mr. *John Urry* of *Chriſt's-Church-College*, *Oxford*, as it is ſaid.

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Freebairn's *Account of this Matter.*

The Letter to Pawlet *and* Drury.

" AFTER our hearty Commendations; we find, by a Speech lately made by her Majeſty, that ſhe doth note in you both, a Lack of that Care and Zeal for her Service, that ſhe looketh for at your Hands, in that you have not, in all this Time (of yourſelves, without other Provocation) found out ſome Way, to ſhorten the Life of the *Scots* Queen, conſidering the great Peril ſhe is hourly ſubject to, ſo long as the ſaid Queen ſhould live; wherein, beſides a kind of Lack of Love towards her, ſhe wonders greatly, that you have not that Care of your own particular Safeties; or, rather, the Preſervation of Religion, and the publick Good, and Proſperity of your Countries, that Reaſon and Policy commandeth; eſpecially, having ſo good a Warrant and Ground for the Satisfaction of your Conſciences towards God, and the Diſcharge of your Credit and Reputation towards the World, as the Oath of Aſſociation, which you have ſolemnly taken, and vowed; eſpecially the Matter, wherewith ſhe ſtandeth charged, being ſo clearly and manifeſtly proved againſt her: And therefore ſhe taketh it moſt unkindly, that Men profeſſing that Love towards her, that you do, ſhould in a kind of ſort, for Lack of the Diſcharge of your Duties, caſt the Burthen upon her; knowing, as you do, her Indiſpoſition to ſhed Blood, eſpecially of one of that Sex, and Quality, and ſo near to her in Blood, as that Queen is. Theſe Reſpects, we find, do greatly trouble her Majeſty, who, we aſſure you, hath ſundry Times proteſted, that if the Regard of the Danger of her good Subjects, and faithful Servants, did not more move her, than her own Peril, ſhe would never be drawn to aſſent to the ſhedding of her Blood. We thought it meet, to acquaint you with theſe Speeches, lately paſſed from her Majeſty, referring the ſame to your good Judgments: And ſo we commit you to the Protection of the Almighty."

Letters ſaid to be found among Pawlet's *Papers.*

Your aſſured Friends,

London, Feb. 1. 1586.

FRA. WALSINGHAM,
WILL. DAVISON.

In two other Letters, we are told, Mr. *Daviſon* deſires *Pawlet*, to burn his Letters, and complains, it was not already done. Then they

1587. 30 Eliz. they give us the following Letter, from *Pawlet* and *Drury*, to the Secretaries, *Walſingham* and *Daviſon*, as an Anſwer to the former.

SIR,

" YOUR Letters of Yeſterday coming " to my Hands, this preſent Day, at " 5 *p. m.* I would not fail, according to " your Directions, to return my Anſwer with " all poſſible Speed; which I ſhall deliver unto " you with great Grief and Bitterneſs of Mind, " in that I am ſo unhappy, as living to ſee " this unhappy Day, in which I am required, " by Direction from my moſt gracious Sove- " reign, to do an Act, which God and the " Law forbiddeth. My Goods, and Life, are " at her Majeſty's Diſpoſition, and I am ready " to loſe the next Morrow, if it ſhall pleaſe " her; acknowledging, that I do hold them, " as of her meer and moſt gracious Favour, " and do not deſign to enjoy them, but with " her Highneſs's good liking. But God for- " bid I ſhould make ſo foul a Shipwreck of " my Conſcience, or leave ſo great a Blot to " my poor Poſterity, and ſhed Blood with- " out Law, or Warrant; truſting, that her " Majeſty, out of her accuſtom'd Clemency, " and the rather, by your good Mediation will " take this my Anſwer in good Part, as pro- " ceeding from one, who never will be inferior " to any Chriſtian Subject, living in Honour, " Love, and Obedience, towards his Sove- " reign; and thus I commit you to the Mercy " of the Almighty."

Your moſt aſſured poor Friend,

Fotheringay,
Feb. 2. 1586. A. PAWLET.

" *P. S.* Your Letters, coming in the plural " Number, ſeem to be meant to Sir *Drew* " *Drury*, as well as to myſelf; and yet, be- " cauſe he is not named in them, neither the " Letter directed unto him, he forbeareth to " make any particular Anſwer, but ſubſcribeth " in Heart to my Opinion."

D. DRURY.

Remarks on Daviſon's Trial.

The Reader, no doubt, obſerves, that moſt of theſe old Trials are extremely defective. Every one knows, that the Method of proceeding in the *Star-Chamber*, was by Bill and Anſwer; and here the Editor gives us neither the one, or the other; or ſo much as an Abſtract of them. All that we have is, only ſome ſhort Notes, taken by one of the Audience in Court, at the Time of the Trial; or, perhaps, what he depended purely on his Memory for: At beſt, we meet with nothing more than an ordinary Memory might have retained; and what Alterations, or Omiſſions, there may be, I won't be anſwerable for: However, it is obſerved, if we cannot have the Trial as perfect as we would, it is better to have theſe Minutes, than none at all. Something may be learnt from them, imperfect as they are: But 'tis well, if ſome of them do not give us a wrong Bias, and furniſh us with unreaſonable and unwarrantable Prejudices.

Here we find a great Monarch, perhaps the beſt that ever reigned, either in this or any other Kingdom, if we conſider the Wealth and Happineſs of her Subjects, during ſo long an Adminiſtration, baſely reviled and calumniated, and charged with the moſt deteſted Crimes, upon ſuch ſlender Evidence, as would not be admitted againſt a common Perſon. 1587. 30 Eliz.

Daviſon, is made to inſinuate, in his Defence, that every Tittle of the Charge againſt him was falſe; though he had not the ill Manners to contradict, either the Queen, or the Lord Treaſurer, *directly*, he ſaid: Nay, he goes ſo far, as to endeavour to make his Readers believe, that her Majeſty ſhewed no Reluctance at putting the Queen of *Scots* to Death; and that ſhe would have had her privately aſſaſſinated and murdered; which cannot be credited by impartial Men, on many Accounts; for, firſt, there was no Manner of Neceſſity for ſuch a private Aſſaſſination, when that Queen lay under Sentence of Death, and the whole Nation preſſed her Majeſty continually to let her be executed, in purſuance thereof. Queen *Elizabeth* had nothing to do, but to ſuffer the Sentence to be executed, if ſhe wanted to have the Queen of *Scots* out of the Way. To what End, or Purpoſe, therefore, ſhould ſhe endeavour to have her murdered in ſecret, unleſs ſhe was fond of having her Memory traduced. Beſides, we meet with ſeveral Contradictions in the Accounts, *Daviſon* is made to give of this Matter. In ſome Places he inſinuates, that the Queen did command the Execution, wondered it was not done, and incited him to haſten it; and in others, he evidently ſhews, that ſhe did not know of it; particularly when ſhe told her Dream, and ſpoke of the Queen of *Scots*, as living, after ſhe was dead.

It will be obſerved further, that the Letters, at the End of the Trial, if they were genuine, make *Walſingham* and *Daviſon*, the two Secretaries of State, the principal Inſtruments, to procure the Aſſaſſination of the Queen of *Scots*; whereas *Daviſon*, and his Friends, declare their Deteſtation of it, and pretend, that *Daviſon* repreſented to the Queen, the Foulneſs of the Fact, and would have no Concern in it; ſo that *Daviſon*'s Repreſentation of the Matter, and theſe Letters, cannot both be true; and if the Letters are to be credited, which were ſaid to be found among *Pawlet*'s Papers, both *Walſingham*'s and *Daviſon*'s Reputations muſt be given up, as well as the Queen's. But is it equitable to blaſt the Fame of ſo great a Queen, and her Miniſters, upon two Letters, found, no Body knows where or how; and without any Pretence of proving the Hands that wrote either of them? As Biſhop *Burnet* obſerves, a Lye or Calumny, recorded in Hiſtory, is much worſe than a Lye in common Diſcourſe; as it is like to be more generally diffuſed, and of a longer Duration: The Slander is continued down to Poſterity. We act as if it was of no Moment, whether ſovereign Princes, and great Men, ſuffered in their Characters, or not: But ſhall we rob a great and good Queen of her Fame, on ſuch Evidence, as a Jury would reject, in the Caſe of a common Perſon; a Queen who revived and eſtabliſhed the Reformation; a Queen who governed her People with the greateſt Equity and Goodneſs; and during whoſe Reign, the Nation flouriſhed,

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riſhed both at Home and Abroad. It ſhall ever be a Rule with me, to judge, both of Princes and private Men, according to the general Tenor of their Actions, and not from ſome ſingle Event; eſpecially where there is ſufficient Room to doubt, that even That has not been fairly repreſented: But, I don't know how it comes to paſs, People are ready to arraign their Superiors upon every ſlight Surmiſe, and ſwallow greedily, whatever is ſuggeſted to their Prejudice; when they cannot but acknowledge the Iniquity of ſuch a Proceeding, in a private Caſe. For my Part, I find fewer Blemiſhes in the long Reign of Queen *Elizabeth*, and more Advantages accruing to her Subjects, than in any Reign of the like Duration; and muſt have better Proof, therefore, than I have ever yet met with, before I give any Countenance to the Tales that have been framed, concerning her, in relation to the Execution of the Queen of *Scots*.

Give me leave to obſerve further on the Letter, ſaid to be ſent from the Secretaries of State, to *Pawlet* and *Drury*, to murder the Queen of *Scots:* That they firſt tell theſe Gentlemen, that the Queen abhorred the Thoughts of ſhedding Blood, eſpecially the Blood of ſo near a Relation, or to that Effect; and then, uſe all the Arguments they could think of, to incite them to aſſaſſinate the Queen of *Scots*, ſuggeſting, that nothing could give her Majeſty greater Satisfaction: Thus making her, they repreſent ſo extremely tender in Caſes of Blood, as thirſting to ſhed that of the Queen of *Scots*: And, methinks, *Pawlet* and *Drury*'s ſubſcribing themſelves, *your moſt aſſured Friends*, in their Letter, to the two principal Secretaries of State, is hardly reconcileable to good Manners. If there were no other Marks of Forgery, this alone would induce me to believe, that Letter was not genuine.

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The Trial of Sir RICHARD KNIGHTLY, Mr. HALES, Mr. WICKSTONE, and his Wife, for Countenancing and Promoting, the Printing and Publiſhing certain ſeditious Libels, before the Court of *Star-Chamber*, the 13th of *February*, 1588. 31 *Eliz.*

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Trial of Knightly, &c.

Bill and Anſwers wanting.

THE Editor of this Proceeding has given us, neither Bill, Articles, or Anſwers, in this Cauſe; but only ſome Scraps of Speeches of the Queen's Counſel, at the Trial, and of the Evidence; with ſuch a ſhort Abſtract of the Priſoner's Defence, that it ſcarce deſerves a Place in the State Trials: However, ſuch as it is, I ſhall endeavour to give ſome Account of it.

Charge by the Queen's Counſel.

The Attorney-General *Popham*, it ſeems, opened the Charge; wherein he obſerved, the Happineſs of the Queen's Subjects, under her Adminiſtration, which the Papiſts and ſeditious Sectaries endeavoured to diſturb: Firſt, the *Presbyterians*, then the *Browniſts*, and now a third Sort of Diſſenters; who were for ſubverting all Eccleſiaſtical Government, and for eſtabliſhing ſeperate and independant Congregations, in every Pariſh. Nor were they content with railing at the Church; but attacked the Court and the civil Powers, preaching againſt the Laws, and confounding all Property.

That theſe Sectaries were, generally, compoſed of the Refuſe and Scum of the People, who endeavoured to reduce all to Confuſion, that they might give Law to their Governors: The evil Tendency of whoſe Deſigns appearing in Swarms of ſeditious Pamphlets and Libels, her Majeſty had wiſely iſſued ſeveral Proclamations, for ſuppreſſing and burning ſuch Books and Papers; requiring, that no Printing ſhould be uſed, but in *London*, *Oxford*, or *Cambridge:* Whereupon they fell to Printing in Corners, and obſcure Places; in which they were aſſiſted and countenanced by the Priſoners at the Bar: Particularly, Sir *Richard Knightly* cauſed a Printing-Preſs to be brought into one of his Houſes, and ſuffered a ſeditious Pamphlet of *Penry*'s * to be printed there: And, when he was told the Danger of it, by the Parſon of the Pariſh, he ſtill concealed it, and read the Book, though he ordered the Preſs to be removed: That *Walgrave*, the Printer, was recommended by Sir *Richard*, to Mr. *Hales*, who gave him Entertainment; and there the Libel, entitled, *A Supplication to the Parliament*, was printed, and afterwards publiſhed by Sir *Richard*'s Man, as well as another Book, entitled, *Have you any Work for the Cooper:* That this Preſs was afterwards conveyed to Mr. *Wickſtone*'s Houſe, where *Martin Senior*, and *Martin Junior*, were both printed; wherein they declare, their Reſolution to eſtabliſh their Sect; and that all Laws that were oppoſite to their Diſcipline, ought not to be obeyed; ſuggeſting, that this was the proper Time to attack and diſtreſs the Government, while the Nation was threatened with an Invaſion from *Spain* (as it was this very Year, 1588.) and that *Wickſtone*, by the Influence of his Wife, harboured and aſſiſted the Printers of theſe Libels, with Money and Proviſions.

* *Afterwards hanged for Sedition.*

The Defence of Knightly.

Sir *Richard Knightly* ſaid, in his Defence, that Matters were greatly aggravated againſt him; that he was no Sectary, but of the Religion of the reſt of her Majeſty's Subjects; and deſired his Judges to intercede for him to her Majeſty, againſt whom, he ſaid, he had committed no Offence, nor againſt the State. He denied he had any Knowledge of the Books above mentioned, or any Acquaintance with the Writers of them: That, indeed, there was a Book of *Penry*'s, that had been printed before at *Oxford*, and never called in, which he ſuffered to be printed at his Houſe, on *Penry*'s Requeſt, in reſpect of the Want of Learning, he knew, to be in the Miniſtry; and for that, he thought, there were forty bad Men to one good Man, among the Clergy; yea, ſo bad, that he thought them not worthy to ſweep a Church; and he allowed, therefore, of this Book, for the Furtherance of God's Glory: That, however, the Preſs was not in his own Houſe, but in another, at the further End of the Town: That *Walgrave* afterwards deſired, he might remove his Preſs; and told him, that *Cartwright* had wrote a Book againſt the Jeſuits,

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Jeſuits, which he was to print; concluding, that he hoped her Majeſty would forgive him, as ſhe had forgiven greater Offences.

Hale's *Defence.*

Mr. *Hales* acknowledged the Happineſs of the Nation, under her Majeſty's Adminiſtration; and diſclaimed his Knowledge of the Books, or the Authors: He ſaid, it was true, he had, at the Requeſt of his Uncle, Sir *Richard*, lent his Houſe to a poor Man; but knew not the Man, or his Intentions: That, indeed, he met *Penry* at *Coventry*, who gave him *the Supplication to the Parliament*, and told him, he would print Mr. *Cartwright*'s Book againſt the *Romiſh Teſtament:* That he was privy there was a Preſs in the Houſe, but to nothing elſe.

Wickſtone's *Defence, and his Wife's.*

Wickſtone confeſſed, that at his Wife's Deſire, he had permitted the Printers to reſide at his Houſe; and Mrs. *Wickſtone* acknowledged, that her Zeal for the Reformation of the Church, cauſed her to entertain them, not thinking it could be hurtful, or dangerous, to the State; and whatever her Offence was, ſhe deſired her Husband might not be puniſhed for it; ſince what he had done, was at her Requeſt.

The Queen's Counſel reply.

Then the Queen's Counſel replied, and ordered ſeveral Paſſages out of the above-mentioned printed Libels to be read; obſerving, that they tended no leſs to the Subverſion of the State, than the Eccleſiaſtical Government; and, indeed, of all Laws whatever, whether Eccleſiaſtical or Civil.

Paſſages cited out of the Libels.

Particularly that Paſſage, where *Penry* ſays, *They would never give over, though the* Spaniards *were overthrown and diſcomfited by Famine and Hunger; yet the Lord would raiſe them up again, and make a weak and feeble Generation to overthrow us.*

In another Paſſage it is ſaid, That *no Truth is to be found in our Parliaments, or Councils:* That *if the Government of the Sectaries was not received, thoſe of the Parliament-Houſe, or their Seed, ſhould never proſper, or bear Rule in* England. *And I* (Penry) *will never leave, till either this be performed; or that the Lord, in Vengeance and Blood, do plague and puniſh us.*

In the Book, entitled, *Have you any Work for the Cooper*, it is affirmed, That *Our Church Government is utterly unlawful; and although this Form of theirs might be inconvenient, in many Points, yet every Chriſtian was bound to receive their Paſtors, Doctors, Elders, and Deacons.*

In *Martin Junior*, it is declared, *to be unlawful to have any other Government, but theirs: That all human Laws, maintaining any other Forms, were ungodly, and not to be obeyed:* That *the Warrant that Biſhops have to maintain their Authority, is no better than that which did maintain the Stews:* That *Antichriſt was the Head of their Doctrine, and they Part of his Body.*

In *Martin Senior*, *They ſpeak reproachfully of the Common Prayer: Declare, that a hundred thouſand Hands would ſign to their Poſitions, and the Government they ſeek: That they are the Strength of the Land; and that it were no Policy to reject their Suit at ſuch a Time, when the Land was invaded.*

The Books cenſured,

The Lords, having taken the Matter into their Conſideration, all agreed, That the Books were moſt leud, dangerous, ſeditious, and pernicious to the State; moſt ſcandalous, in reſpect to our Adverſaries the Papiſts, who took occaſion to ſerve their Intereſt by our Diſſentions. Mr. Vice-chamberlain added, that they were ſlanderous to her Majeſty; accuſing her of not ſupporting Religion, though ſhe had, in Defence of Religion, bravely defeated, both the Enemies of our Religion, and of the State, when the Sword of War was drawn againſt her.

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And the Principles of the Sectaries.

That theſe Sectaries took away her Majeſty's Regal Power; diſinherited the Nobility and Gentry; took away all Property, and aboliſhed the reverend Eſtate, and Calling, of Biſhops, which were one of the three antient Eſtates of the Land; and thus they intended to pick out one Stone after another, till they pulled the whole Houſe upon their Heads.

Cenſure of the Priſoners.

That Sir *Richard*, who countenanced and encouraged theſe Libels, had been greatly favoured by the Queen, which aggravated his Crime: That ſome of the reſt pretended Ignorance; but Ignorance was no Excuſe, where it was wilful and malicious, and only affected, to avoid the Puniſhment of the Law: That it was ſtill a ſillier Anſwer of Mr. *Wickſtone*, to ſay, *his Wife deſired him*: A great Folly, to be ruled by her; and, not agreeable to the Modeſty of her Sex, for her to pretend to govern her Husband.

The Lord Chancellor obſerved, that indeed the Priſoners were not the Deviſers, or Makers of theſe Books; for, if they had, they would have been proſecuted in another Place (capitally.)

That the County of *Northampton* then ſwarmed with Sectaries; and in one Place a Presbytery was planted among them, till one of the Brethren offending, whom they would have puniſhed, he fled to a Juſtice of Peace for Protection whereby their Deſign of erecting Tribunals was diſcovered, and a Period put to their Dominion; and that they appeared to be ſo divided among themſelves, in ſome Places, that they were ready to riſe in Arms againſt each other, to the Diſturbance of the Government.

Sentenced to be fined, and impriſoned.

After which, all the Lords agreed in the following Sentence, *viz.* that Sir *Richard* ſhould be fined Two thouſand Pounds; Mr. *Hales* One thouſand Marks; Mr. *Wickſtone*, for obeying his Wife, and not diſcovering the Preſs, Five hundred Marks; Mrs. *Wickſtone*, One thouſand Pounds; and that all of them ſhould be impriſoned during her Majeſty's Pleaſure.

Remarks on the Trial of Knightly, *&c.*

Here we diſcover the Affection of the Puritans and Sectaries, for the Church of *England*, ſo early as the Reign of Queen *Elizabeth*. They were then conſpiring the Ruin of our Eccleſiaſtical Eſtabliſhment, and even the Deſtruction of the Queen and State, becauſe ſhe ſupported it, and would not ſubmit to their Plan of Government: And, notwithſtanding their Cries againſt Popery, were ready to join even the *Spaniſh Armada* againſt their Country; though they knew the avowed Deſign of the *Spaniards*, in the Year 1588. when they fitted out that prodigious Fleet, was to deſtroy the Proteſtant Religion, and re-eſtabliſh Popery; nay, to deſtroy entirely our civil Conſtitution, and make us Vaſſals to the Pope, or their own bigotted Monarch: Yet were the Puritans ready to join thoſe Enemies of our Nation and Religion,

1588. 31 Eliz. Religion, and actually endeavoured to foment Inſurrections, when their Fleet was upon the Coaſt, in order to favour their Deſcent; and all this, in hopes of eradicating the Church of *England*, and introducing their own wild Whimſies, and impracticable Schemes, in the room of it: And will the Church of *England* ever be ſuch *Dupes*, to admit their Succeſſors in Iniquity, Men of the ſame Principles, who have not only thus declared their Good-will, to the Eſtabliſhment, but have actually ſubverted both Monarchy and Epiſcopacy, when it was in their Power? Shall we, I ſay, ever admit ſuch Men into Power, and give them an Opportunity to inſult and ruin the State, as well as the Church again? Shall we make thoſe the Guardians of our Religion and Liberties, whoſe Intereſt it is to deſtroy both? Shall we, becauſe they have the Aſſurance to demand a Share in the Government, as *their natural Right*, be ſuch Fools and Naturals, to give them another Opportunity to deprive us of all our Rights and Properties? Can any one believe, after what we have ſeen, that they will even *tolerate* the Church of *England*, if they had the Power in their Hands? No: Nothing can be expected from the admitting the Diſſenters into the Adminiſtration, but the total Subverſion both of Church and State? We are now too well appriſed, what they mean by that terrible Word *Perſecution*. They declare, they ſhall always look upon themſelves to be in a perſecuted State, till we compliment them with the Power to extirpate our Antichriſtian Hierarchy, as they ſtile it; and that all Laws are impious, null, and void, that tend to keep the Saints out of the Adminiſtration. As to their ſtale Pretence, of being Friends to the preſent Royal Family, Infidels and Hereticks pretend the ſame. No doubt but they would be glad of any Aſſiſtance, to exalt them to the Dominion they aim at: But when this was once accompliſhed, they would tell us, all Things muſt ſubmit to their adored Idol, *Presbytery:* And if the King would not obey their Dictates, he muſt expect to be anathematized, and depoſed, if not arraigned, and condemned, for High Treaſon, againſt theſe his ſovereign Subjects, as one of the beſt of his Predeceſſors was in the laſt Century. 1588 31 Eliz.

I ſhall conclude theſe Remarks, with a Paſſage out of *Camden*, who relates, that, while the Nation was then ſtruggling with the Power of *Spain*, and defending itſelf from the formidable Attacks of the Papiſts, it was diſturbed by thoſe domeſtick Enemies, the Schiſmaticks, who loved to fiſh in troubled Waters. Never was there a Time, ſays that celebrated Hiſtorian, when the Diſcipline of the Church was run down, with that ſaucy Pertneſs; and the Authority of her Officers ſo rudely and baſely inſulted, on the Queen's refuſing to liſten to any Changes in Religion, or to encourage theſe new Modellers, who endeavoured to eſtabliſh their *Geneva* Platform, by loudly railing at the *Engliſh* Forms and Rites, rendering the Names of *Biſhop* and *Prelate*, as odious as they could to the common People: To which End, they daily publiſhed ſcurrilous Pamphlets againſt the Church, among which ſeveral went by the Name of *Martin Mar-Prelate*. The Authors whereof appeared rather to have learned their Language at *Billinſgate*, than to ſpeak the Senſe of any Chriſtian Community; for which ſome of them were fined in the *Star-Chamber*, though *at the Interceſſion of the Archbiſhop, their Fines were remitted, and they were ſet at Liberty.* Cambden's *Account of thoſe Puritanical Libellers.* *They are pardoned.*

In another Place, he ſays, *Cartwright*, and ſome of their Chiefs, were called before their Superiors; but with what a ſtrange Petulancy, and ſullen Haughtineſs, theſe Congregational Teachers managed themſelves, maugre all the Tenderneſs and prudent Forbearance of the Archbiſhop, I leave, ſays that Hiſtorian, to the Obſervation of Eccleſiaſtical Writers.

See Cambden's *Hiſtory of the memorable Year* 1588.

The Trial of PHILIP HOWARD Earl of *Arundel*, for *High Treaſon*, before the Earl of *Derby* Lord High Steward, and three and twenty other Peers, the 18th of *April* 1589. 31 *Eliz.*

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The Trial of the Earl of Arundel

The Charge againſt him.

HE was charged with holding a Correſpondence with Cardinal *Allen*, an arch Traitor, that had ſolicited the Pope, and King of *Spain*, to invade the Realm. He was alſo charged with ſuggeſting, the Queen was an Heretick, and not fit to govern; and procuring one *William Bennet*, a ſeminary Prieſt, to ſay Maſs, for the Succeſs of the *Spaniſh Armada*, at which the Priſoner aſſiſted: That he had been reconciled to the Church of *Rome*, contrary to the Statute, which made it High Treaſon; and endeavoured to make his Eſcape over beyond Sea, in order to ſerve under the Prince of *Parma*, againſt his Country; and that he was a Procurer of the late Bull againſt the Queen.

The Evidence.

To prove his praying for the Succeſs of the *Spaniſh* Fleet, the Depoſitions of Sir *Thomas Gerrard*, ---*Shelley*, and *Bennet*, the Prieſt, were read who alſo confirmed their Evidence in Court. *Walton* alſo depoſed, that one *Hill*, a Dependant of the Priſoner's, brought over Letters to *Rheims*, in *France*, importing, that the Earl was to have been General of the Catholicks; and that the *Tower* was to have been ſeized.

To which the Earl anſwered, he had been a Priſoner in the *Tower*, four Years, and upwards, and ſick moſt Part of the Time: That he had been confeſſed by a Prieſt, but not reconciled to the Church of *Rome:* That there was no Proof of great Part of the Charge; and that the reſt was endeavoured to be proved by Perſons attainted, or Priſoners who had confeſſed Crimes that rendered them incompetent Witneſſes.

The Peers been withdrawn for an Hour, returned, and unanimouſly declared the Priſoner GUILTY: Whereupon the Lord High Steward pronounced Judgment of High Treaſon againſt him; but, after ſeveral Reprieves, he died a natural *He is convicted.* *Condemned.* *Reprieved.*

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tural Death in the *Tower*, *Oct.* 19. 1595. having been Priſoner there ten Years and ſix Months.

Remarks on the Earl of Arundel's Trial.

This Trial is alſo very imperfectly taken: However, from what we have, there does not ſeem to have been any formed Deſign againſt the State proved againſt this Lord: and there is ſcarce any Inſtance of the Queen's ſuffering any Perſon to be put to Death, purely on Account of Religion, or being reconciled to the Church of *Rome*; though this was High Treaſon by the Statute; and thus much was ſufficiently proved againſt the Priſoner. 1589. 31 Eliz

The Trial of JOHN UDALL, Clerk, for *Felony*, at the Aſſizes of *Surrey*, the 24th of *July*, 1590. 31 *Eliz.*

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Udall's Trial for Felony. Refuſes to be examined by the Council.

IN *January* 1589-90. *Udall* was examined before a Committee of Council, concerning a ſeditious Libel, entitled, *The Demonſtration of Diſcipline, which Chriſt had preſcribed in his Word, for the Government of the Church*; of which he was ſuppoſed to be the Author: But he would give no other Anſwer to the Queſtions propoſed, than that he was not obliged by Law to accuſe himſelf: Whereupon he was committed to the *Gate-Houſe*, till the following Summer-Aſſizes, held at *Croydon*, for the County of *Surrey*, where he was indicted on the 23d of *Eliz. Cap.* 2. which made it Felony to write, or publiſh, any Book, or Writing, containing falſe, ſeditious, and ſcandalous Matter, to the Defamation of the Queen's Majeſty, or to the encouraging, ſtirring, or moving, any Inſurrection, or Rebellion; as this Book of the Priſoners was held to do, by reviling the Biſhops and Clergy, and inciting the People to promote the Subverſion of the eſtabliſhed Church, which was a Part of the Conſtitution; eſpecially as they were exhorted to bring this about by Force, if they could not otherwiſe accompliſh it.

The Charge.

Counſel denied.

The Priſoner being brought to the Bar, deſired he might have Counſel, which was denied him. Then he deſired the Court to inform him, how many of the Jury he might challenge by Law: To which it was anſwered, they ſate there to judge, and not to give him Counſel.

The Court refuſe to adviſe him.

The Charge opened, and enforced.

The Queen's Counſel, in opening the Indictment, charged the Priſoner with Blaſphemy; and obſerved, that he, and his Sect, aſſumed an Authority, even over her Majeſty; and that he was an intimate Acquaintance of *Penry*, a ſeditious Puritan Preacher, Author of a Libel, entitled, *Martin Mar-Prelate:* And it was urged againſt him, that her Majeſty, being the ſupreme Governor of all Perſons, and Cauſes, and having eſtabliſhed that Government by Biſhops, which the Priſoner arraigned; his ſtirring up the People againſt the Epiſcopal Government, was ſtirring them up againſt her Majeſty, by whoſe Authority they exerciſed their Juriſdiction; obſerving, that he, who pretended to be a Preacher of Peace, ſhould have learned not to have railed on the Rulers of the People, and threatened them with Force and Violence, which all the Judges had reſolved was Felony by the ſaid Statute of the 23d of *Eliz.*

Depoſitions produced as Evidence.

Then the Evidence was produced; and firſt, the Depoſition of *Stephen Chatfield* was read; importing, that he ſaw certain Papers in the Priſoners Study, at *Kingſton*, of the like Tenor with the Priſoner's Book; and that, talking with *Udall* of his being ſilenced, he ſaid, he would give the Biſhops ſuch a Blow, as they never had.

His Examination read.

The Priſoner's Examination alſo was read: Wherein he ſaid, that if the Biſhops put him to Silence, they would give him Occaſion and Leiſure to be employed in writing againſt them. The Depoſition of *Nicholas Tompkins* alſo was read, who teſtified, that the Priſoner told him, he was the Author of the Book, called, *The Demonſtration*; and that he had ſeen it in the Catalogue of his Books.

An Offer made if he would deny his being the Author, he ſhould be acquitted.

Then the Court offered him, if he would take his Oath, that he did not make the Book, he ſhould be acquitted: Nay, if he would ſay, upon his Honeſty, he did not make it, they would believe him; which the Priſoner refuſing, it was urged as a full Proof, that he was the Author of it: And the Jury were told by the Court, they were not to enquire, whether the Priſoner was guilty of Felony, but whether he was the Author of the Book: For all the Judges had already reſolved, that whoever was the Author of the Book, was guilty of Felony, by the Statute.

Directions to the Jury.

His Defence.

The Priſoner entering on his Defence, ſaid, as to the Witneſſes Teſtimony, that they had ſeen Papers of the ſame Tenor in his Study; This was no Evidence againſt him, unleſs they had recited the Words. He alſo objected, that Depoſitions ought not to be read againſt him, in a Capital Caſe, but the Witneſſes produced to his Face; much leſs ought the Evidence of what another had ſaid, be admitted: And the Priſoner offered to bring Witneſſes, to ſhew that the Witneſſes againſt him had contradicted themſelves: But he was not ſuffered to produce any Witneſſes in his Behalf, againſt the Crown.

Depoſitions no Evidence.

Not ſuffered to call his Witneſſes.

Then he inſiſted, that the Statute of the 23d of *Eliz.* was made againſt Papiſts, who ſlandered the Queen as an Heretick, and not againſt the Puritans; and urged, that the writing his Book, could not be Felony, unleſs it had been written with a malicious Intent: And that they taught the People to yield Obedience to her Majeſty, and the Religion received in her Dominions. The moſt the Author could be charged with, he ſaid, was too much Vehemency againſt Abuſes. To bring him within the Danger of that Statute alſo, the Matter muſt be falſe: But this Book he affirmed, was written in Behalf of a moſt true Cauſe: And, laſtly, that the End muſt be, the defaming her Majeſty, or ſtirring up Rebellion; neither of which could be proved againſt this Author, or his Party; appealing to the Court, if it was their Opinion, that the Statute was made againſt Puritans.

Juſtifies the Book.

The Court tell him, the reſiſting the Eccleſiaſtical Government, was reſiſting the Queen.

It was anſwered; that the Intent of the Statute was againſt all Offenders; and he could not deny his having written it, with a malicious Intent, againſt the Biſhops, and the Eccleſiaſtical Government, which was eſtabliſhed by the Laws and Statutes of the Realm, as well as the Civil Government; and that the Biſhops exerciſing their Juriſdiction by the Queen's Authority, who

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who was ſupreme in all Cauſes, Eccleſiaſtical and Civil, in oppoſing their Government, he oppoſed the Queen; and that when he wrote againſt them, he wrote againſt the State: And where he ſaid, it was more eaſy to live in *England* a Papiſt, an Anabaptiſt, or of the Family of Love, than a Puritan, what did he but revile the Queen's Adminiſtration, who was the ſupreme Governor of the Realm?

He inſiſts that oppoſing the Biſhops, was not oppoſing the Queen.

To which *Udall* replied, this was not ſpoken by the Author, in reſpect of her Majeſty's Government and Laws; but in reſpect of the Biſhops, whom their Lordſhips knew to be wholly employed in finding them out, and puniſhing them, not regarding, in a manner, the puniſhing of any Thing elſe. The Book touched only the Corruptions of the Biſhops, and not the Perſon of her Majeſty.

To which it was again anſwered; that, her Majeſty being the ſupreme Governor of all Perſons and Cauſes, and having eſtabliſhed that Government by Biſhops, which he and his Party oppoſed, they oppoſed her Majeſty, rather than the Biſhops, who could not alter the Eccleſiaſtical Laws the Queen had made for them to act by.

Then the Priſoner proceeded in his Defence, and ſaid, that they held it unlawful for a Miniſter to be a Civil Magiſtrate: And, if the Queen made them ſo, they ought not to accept ſuch Employments.

Paſſages in his Book cited againſt him.

The Court obſerved to him hereupon, that there was a Paſſage in his Book, where he ſays, *This Saying will not ſerve their Turn, the Queen and Council will have it ſo:* Which could be levelled only againſt the Queen and State. Another Paſſage alſo was cited, wherein it is ſaid, *They are not ſafe, though they have human Authority on their Side: For he that is on our Side, is mightier than they:* Which the Court interpreted, a reviling her Majeſty, and threatening her with Force and Violence.

To this *Udall* replied; it was true, whoever did unjuſtly, was not ſafe, though all the Powers in the World defended him in it: But they had no Thoughts of uſing Force or Violence.

He is convicted.

Then the Court adjourning, the Jury, in the Afternoon, brought the Priſoner in *Guilty of Felony.*

Sentence reſpited on his Submiſſion.

The next Day, being the 25th of *July*, the Priſoner was called to Judgment; when the Court informed him, that, if he would acknowledge his Offence, they would endeavour to obtain his Pardon. To which he anſwered, he would ſubmit himſelf to her Majeſty; but could not forſake the Cauſe, which he held to be the undoubted Truth of God.

The Judge replied, I hold your Doctrine to be an undoubted Falſhood: And if the Presbytery, you ſeek for, were once eſtabliſhed, it would overturn the Government: And you tell us in your Book, if you cannot have your Diſcipline with her Majeſty's Conſent, you will have it, though you make our Hearts ake: You will bring the Queen and the Crown under your Girdles. Some of you have gone ſo far as to ſay, we have no Church, no Sacraments, no Miniſters, nor any Worſhip of God among us. What Confuſion muſt this create, if not looked to in Time?

At length *Udall* promiſed, he would ſubmit himſelf to her Majeſty: Whereupon Sentence was deferred, and he petitioned the Queen for a Pardon: But relapſing into his former Obſtinacy, Sentence was pronounced againſt him the next *Lent* Aſſizes. While he lay under Sentence of Death, he petitioned her Majeſty again; and King *James*, of *Scotland*, was pleaſed to intercede in his Behalf: And the Queen referring the Matter to Archbiſhop *Whitgift*, his Grace conſented to his Enlargement, on Condition he would leave the Kingdom.

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He relapſes. Sentence paſſed.

He is ſet at Liberty.

Remarks on Udall's Trial.

It ſeems a little hard upon the Priſoner, that, when the Court denied him Counſel, they would not inform him, how many of the Jury he might challenge. The reading the Depoſitions of Witneſſes againſt him, and the denying to examine his own Witneſſes, were ſtill greater Hardſhips: But in this he had the ſame Uſage as other Priſoners in thoſe Days had. The Duke of *Norfolk* had no better Treatment: Nothing was permitted to be offered that made for the Priſoner, and againſt the Crown as they termed it; which was certainly very high Injuſtice, notwithſtanding it was then the general Practice: And the ſucceeding Age ſeemed to be aſhamed of it; though it was not till after the Revolution, that the Priſoner's Witneſſes were allowed to be ſworn, and conſequently very little Credit was given to them.

Now, indeed, the Priſoner, has all the fair Play he can deſire: No Depoſitions are read againſt him in Capital Caſes, where the Witneſs can be produced; and he may have the Proceſs of the Court, to bring in his Witneſſes; though ſtill no Counſel is allowed in Felony: And, if the Proof be ſufficient to ſatisfy the Jury, two Witneſſes are not required, to convict a Perſon of Felony.

As to the Charge the Court gave the Jury, to find the Priſoner Author of the Book, and leave the Law to them: This was no more than ordering them to give a ſpecial Verdict, which is ſometimes done to this Day: But the Jury may, if they think fit, take the Law, as well as the Fact, upon themſelves, and find, generally, *Guilty*, or *Not Guilty*.

Some are apt to think, the Law was ſtretched; and that the Priſoner had hard Uſage, in being indicted on the 23d of *Eliz.* which made it Felony to revile the Queen, and incite the People to Rebellion; inſinuating, that the abuſing the Biſhops, the oppoſing the Eccleſiaſtical Laws, and threatening, by Force, to ſubvert the Church, did not bring him within the Danger, of that Statute: But, as it appears to have been reſolved by all the Judges of *England*, that theſe Things were Felony by that Statute; and that the inciting the People, to deſtroy the Eccleſiaſtical Government, which was a Part of the Conſtitution, was as criminal, as if he had incited them to oppoſe her Majeſty's Civil Government, ſhe being ſupreme in all Cauſes, Eccleſiaſtical and Civil, the Law does not ſeem to have been much ſtrained in this Caſe. Was a Party of Men, in *Scotland*, to preach againſt the Kirk, and incite the People to deſtroy the Presbyterian Diſcipline there, at this Day, I Queſtion whether it would not be deemed Treaſon againſt their Conſtitution. They would inſiſt, that their Kirk was Part of the Eſtabliſhment; and that it was no leſs Penal to deſtroy their Eccleſiaſtical than Civil Government. However, notwithſtanding the Miniſtry thought

fit to proſecute this turbulent Preacher, for his ſeditious Diſcourſes and Writings, to deter others from the like Attempts, we find he was very mercifully dealt with at laſt, and ſuffered no other Puniſhment, than a few Months Impriſonment.

1592. 34 Eliz. Perrot's Tryal.

The Trial of Sir JOHN PERROT, late Lord Deputy of *Ireland*, for *High Treaſon*, before Commiſſioners of *Oyer* and *Terminer*, at *Weſtminſter*, the 27th of *April*, 1592. 34 *Eliz.*

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Two Indictments for the ſame Species of Treaſon.

THERE were two Indictments preferred againſt him: The firſt Indictment charged him with High Treaſon, in compaſſing and imagining the Death and Deſtruction of the Queen: And to that End, with correſponding with the King of *Spain*, and ſeveral Traitors there, to procure an Invaſion of the Kingdoms of *England* and *Ireland*; and with inciting and encouraging ſeveral Traitors and Rebels at Home, to raiſe an Inſurrection in *Ireland*.

The ſecond Indictment alſo charged him with High Treaſon, in compaſſing the Death of the Queen; and to that End, correſponding with the Duke of *Parma*, and adviſing with Sir *William Stanley*, a Rebel to the Queen, concerning his traiterous Purpoſes.

The Evidence.

The firſt Part of the Evidence charged Sir *John*, with ſeveral diſreſpectful Speeches of her Majeſty; from whence the Queen's Counſel inferred the Treaſon of his Heart: Particularly, it was teſtified, that, when the Queen ſent him Orders to *Dublin*, he ſaid in Council, *Stick not ſo much upon the Queen's Letters of Command, for ſhe may command what ſhe will, but we will do what we liſt:* That the Queen ſending him her Orders, to make Mr. *Errington* a Clerk of the *Exchequer*, he ſaid, *This fidling Woman troubles me out of Meaſure; God's Wounds, he ſhall not have the Office, I will give it to* Sir Thomas Williams: That the Queen adviſing him, in her Letters, to look well to his Charge, at the Time of the *Spaniſh* Invaſion, he ſaid, *Ah, ſilly Woman! Now ſhe ſhall not curb me: She ſhall not rule me. Now, God's Lady dear, I ſhall be her white Boy now again. Doth ſhe think to rule me now?* That *John Garland* bringing him a Letter from the Queen, that vexed him, he ſaid, *God's Wounds, this it is to ſerve a baſe Baſtard, piſs-kitchen Woman. If I had ſerved any Prince in Chriſtendom, I had not been ſo dealt withal.*

To ſhew that he had been guilty of direct Treaſon, Witneſſes were brought, to prove that he had harboured and protected Traitors. The principal Witneſſes whereof was one *Dennis*, an *Iriſh* Prieſt. *Dennis* alſo depoſed, that Sir *John* gave him Letters to the King of *Spain*, to invite him to invade the Kingdoms of *England* and *Ireland*; ſtipulating for himſelf, that if his Catholick Majeſty ſucceeded, he (Sir *John*) might be made Sovereign of *Wales*; and that Sir *John* gave the Deponent fifty Pounds.

Other Witneſſes teſtified, that Sir *John* correſponded with the Duke of *Parma*; and with Sir *William Stanley*, when he was in actual Rebellion.

Sir John's Defence.

Sir *John*'s Defence conſiſted chiefly in Proteſtations of his Innocence, and Declarations of his Loyalty; or of Exceptions to the Witneſſes, who were either his Enemies, he obſerved, or perjured *Iriſh* Villians, of no Conſcience, or Character; particularly *Dennis*, the Prieſt, he ſaid, had changed his Religion five Times in ſix Years; had counterfeited his Hand ſeveral Times; was a common Drunkard, and a Liar; and had been perjured a thouſand Times. Sir *John* acknowledged, indeed, that he was paſſionate, and might have been guilty of haſty Speeches; but that he ſerved her Majeſty faithfully; particularly in that Year of Danger, 1588. And it was not likely, afterwards, he ſhould promote Invaſions and Inſurrections in her Kingdoms. However, there being ſeveral Miniſters of State upon the Bench, particularly, the Lord Chamberlain, the Lord *Buckurſt*, and Sir *Robert Cecil*, who laboured to get him convicted, the Jury found him GUILTY; and he was condemned as a Traitor. But he was reprieved from Time to Time, and died at length a natural Death in the *Tower*; when the Queen, as it is ſaid, was about to have granted him a full Pardon.

He is convicted.

Remarks on Perrot's Trial.

Here we have an Inſtance of the Danger of being too free with the Characters of Princes; and, how eaſy is it, where a Court gives any Encouragement to the Suggeſtions of a Great Man's Enemies, to get him condemned, as guilty of the moſt heinous Offences. There is little Room to doubt, but that Sir *John Perrot* had, in the main, been true to his Truſt. It is not to be ſuppoſed, the Queen would have made him Governor of *Ireland*, in the moſt dangerous Times, if ſhe had ſuſpected his Integrity; and there muſt have appeared a great deal more againſt him, at his Tryal, if he had been in a Conſpiracy to bring in the *Spaniard*.

Probably, when he found himſelf at a Diſtance from the Court of *England*, he might be guilty of ſome Indiſcretions, and aſſume a more arbitrary Power than his Commiſſion would juſtify; and, by his own Confeſſion, he ſeems to have been guilty of ſome raſh and diſreſpectful Speeches of the Queen; for which, we ſee, ſhe found an Opportunity to humble him: But, probably, never deſigned to take his Life; eſpecially, if it be conſidered, that ſhe reſtored his Eſtate, which was a great one, to his Son, after his Death.

What could be the Reaſon of preferring two Indictments againſt Sir *John*, for the ſame Species of Treaſon, is not eaſy to be conceived, unleſs it was to add the greater Terror to the Proſecution; and, at laſt, I do not perceive, that the Jury gave more than one Verdict, or took any Notice, there was more than one Indictment. But in theſe old Trials, which ſeem to be taken at random, by People of very little Judgment, we muſt be content with ſuch Lights as they could give us. When we come nearer our own Times, we meet with them more perfect.

The

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Earl Gowrie's *Attainder.*

The Attainder, in the Parliament of *Scotland*, of JOHN late Earl of *Gowrie*; ALEXANDER RUTHUEN his Brother; HENRY RUTHUEN, HUGH MONCREIF, and PETER EVIOT, their Accomplices, for *High Treaſon*, the 15th of *November*, 1600.

1600.

THE *Subſtance of the Depoſitions of the Witneſſes, examined before the Lords of the Articles*, (a Committee that prepares Matters for the Parliament) *is as follows:*

Depoſitions of the Witneſſes. The Duke of *Lenox* depoſed, that he attended his Majeſty to the Chaſe, on the fifth Day of *Auguſt* then laſt paſt, together with *Alexander Ruthuen*, Brother to Earl *Gowrie*, and others: And that, having killed a Buck, *Alexander* invited his Majeſty to dine with his Brother, the ſaid Earl, at *Perth* (or *St. Johns's Town*); and, to induce his Majeſty to go thither, acquainted him, that a certain Perſon there, had found a Pitcher full of Gold, of various Coins; but deſired, he would take none of his Attendants with him; which creating ſome Suſpicion in his Majeſty, he deſired the Duke to follow him wherever he went with the ſaid *Alexander*, and not to leave him.

That, when they came near *Perth*, Earl *Gowrie*, accompanied by divers Perſons, met his Majeſty on Foot, and conducted the King to his Houſe; and, that the Earl of *Mar*, Sir *Thomas Ereskin*, and ſeveral other Noblemen and Gentlemen, followed his Majeſty into Earl *Gowrie's* Hall: That, the King going to Dinner in another Room, the Deponent (the Duke) and the reſt of the Court, afterwards ſet down to Dinner in the Hall; and Earl *Gowrie* came to them, and ſaid, his Majeſty deſired they would drink his Health; and, as ſoon as they had drank, he (the Duke) got up, and went to find out his Majeſty; but the Earl told the Company, the King was gone to repoſe himſelf; and led them into the Garden, where Mr. *Thomas Cranſtoun* came to them, and ſaid, the King was on Horſeback: Whereupon Earl *Gowrie* called, to Horſe, and they came to the Fore-gate, and the Porter telling them, his Majeſty was not paſſed that Way, Earl *Gowrie* aſſured them, he was gone out at the Back-Gate: Whereupon the Company paſſed through the Fore-gate; and, while they were ſtanding before it, debating which Way the King was gone, he (the Duke) heard a Voice, and ſaid to the Earl of *Mar*, *This is the King's Voice that Cries, be where it will*; and ſo they all looked up to the Lodging, and ſaw his Majeſty look forth of the Window without his Hat; his Face red, and a Hand griping his Cheek and Mouth; and the King cried out, *Murder! Treaſon! my Lord* Mar, *help, help!* And immediately the Lord *Mar* and the Company, ran up the ſtairs of the Gallery-Chamber; where his Majeſty was, to relieve him, but found the Door faſt; and, notwithſtanding they got large Hammers to break it open, they did not enter the Chamber, till Earl *Gowrie* and his Brother were both ſlain.

The Earl of *Mar*'s Depoſition was of the ſame Tenor as that of the Duke of *Lenox*'s.

Andrew Henderſon, Chamberlain of *Schoon*, depoſed, that on *Monday* Night, the 4th of *Auguſt* then laſt paſt, being in Company with Earl *Gowrie* and Mr. *Alexander Ruthuen* within the Earl's own Chamber, the Earl ordered the Deponent to ride with his Brother *Alexander* to *Falkland*, at four the next Morning, and take *Andrew Ruthuen* with him; and, that he (the Deponent) ſhould haſten back with his Brother's Orders, leaving *Andrew Ruthuen* with them; and, that they all went to *Falkland* together, where they met with his Majeſty: That Mr. *Alexander* thereupon ordered the Deponent to ride back to *Perth*, to his Brother the Earl, and acquaint him, that his Majeſty would be there with a few People, and that a Dinner ſhould be prepared for him: That when he arrived at *Perth*, the Earl enquired, privately, of the Deponent, how his Brother was received by the King, and what Number of People his Majeſty brought with him: And bid him (the Deponent) put on his *Secret* (his Armour under his Cloaths) for he had a *Highland* Man to take; and that he accordingly did put on his *Secret*: That the Earl alſo ordered him to ſend for his (the Earl's) Steel Bonnet and Gantlet; and that afterwards, his Majeſty, the Duke of *Lenox*, and the Earl of *Mar*, with ſeveral other Noblemen and Gentlemen, came to Earl *Gowrie*'s Houſe in *Perth*: That the Earl, *Alexander Ruthuen*, and the Deponent, being in the outer Chamber, where the King dined, Earl *Gowrie* ſpoke to him (the Deponent) privately, and bid him do what his Brother ordered him; and then locked him in the Room; where he had not remained above half an Hour, when *Alexander Ruthuen* opened the Door, and entered the Room, dragging in the King by the Arm: That then he put his Hat on his Head, and drawing out the Deponent's Sword, ſaid to his Majeſty, *Sir, you muſt be my Priſoner: Remember on my Father's Death*: And, as he held the Sword to the King's Breaſt, his Majeſty being about to ſpeak, *Alexander* ſaid, *Hold your Tongue Sir, or, by Chriſt, you ſhall die*; and his Majeſty anſwered, *Mr.* Alexander, *ye and I were very great together: and as touching your Father's Death, Man, I was a Minor: My Council might have done any Thing they pleaſed. And farther, Man, albeit ye bereave me of my Life, ye will not be King of* Scotland; *for I have both Sons and Daughters; and there are Men in this Town, and Friends, that will not leave it unrevenged:* That, while *Alexander Ruthuen* held the Sword at the King's Breaſt, the Deponent wrenched it out of his Hand; and *Alexander* ſaid, *It was not his Life, or his Blood, that he craved*, and the King anſwering, *What is it you crave Man, if you crave not my Life? Alexander* replied, *It is but a Promiſe; and my Lord my Brother will tell you*: Then the King ſaid, fetch your Brother; which *Alexander* ſaid he would, provided the King would not cry out, or open the Window, till he came again; and the King promiſed he would not: Then *Alexander*

1600. *der* went out, and locked the Door after him: Whereupon the King ſaid to the Deponent, How came you here Man? and he anſwered, As God lives, I am ſhut in here like a Dog. Then the King ſaid, will my Lord *Gowrie* do me any Evil, Man? and the Deponent anſwered, I vow to God I will die firſt; and the King bidding the Deponent open the Window, *Alexander Ruthuen* came in again, and ſaid to his Majeſty, *By God there is no Remedy*, endeavouring to bind his Hands with a Garter: Whereupon the King ſaid, *I am a freePrince, Man, I will be not bound*, and thereupon he got his Hand away; and the Deponent took the Garter from *Alexander*, who then threw his Left Arm about the King's Neck, and thruſt his Right Fiſt to his Mouth: Whereupon, the Deponent having opened the Window, his Majeſty cried out *Treaſon, Treaſon!* and *Alexander* ſaid to the Deponent, *Am I to have no Help from thee? Thou Villian! we all die*; and laying his Hand on his Sword, the King ſtayed his Hands, and prevented his drawing of it; and, in the mean Time, the Deponent opened the Door, and let the King's Servants in; and *John Ramſay*, entering firſt, laid about him with his Sword; but the Deponent made his Eſcape into the Yard, where he ſaw Earl *Gowrie* with his Head-Piece on, and his two drawn Swords in his Hands, accompanied by ſeveral Perſons; but the Deponent went home to his own Houſe, and told his Wife, if he had not been at the Earl's, the King had been ſtabbed twice that Night.

The Abbot of *Inchechaffrey* depoſed, that, on the 5th of *Auguſt* laſt, ſtanding before Earl *Gowrie's* Gate, in *Perth*, with the Duke of *Lenox*, and the reſt of the Company above-mentioned, they heard a Voice, and ſaw his Majeſty looking out of a Window, without his Hat, his Face red, and crying, Fy, Help, my Lord *Mar!* Treaſon! Treaſon! I am murder'd! That, in an Inſtant they perceived, he was pulled by Force from the Window; and that they thereupon ran up into the Gallery, to reſcue his Majeſty, as the Duke of *Lenox* and the Earl of *Mar*, had depoſed.

The Abbot of *Lindores* confirmed the Duke of *Lenox*'s Depoſition; and depoſed further, That, after Dinner, it being given out, that his Majeſty was departed towards *Falkland*, and they were come down to the Gate, the Porter aſſured them, his Majeſty was not paſſed forth; and Earl *Gowrie* affirming, he was gone out at the Back-gate, the Porter ſaid, *That cannot be, my Lord, for I have the Key of the Back-gate*, and his Majeſty crying out of the Window, *Treaſon! Treaſon!* &c. ſoon after, this Deponent ſaw *James Ereskin*, and Sir *Thomas Ereſkin*, lay Hands upon Earl *Gowrie*, ſaying, *Traytor! this is thy Deed, and thou ſhalt die:* But Earl *Gowrie*'s Men reſcued him from them; and the Earl with two drawn Swords, and accompanied by thirty Perſons, ran into the Houſe where his Majeſty was.

Sir *Thomas Ereskin* confirmed *Lindore*'s Depoſition; and added, That, Sir *John Ramſay* calling upon them, to come up and aſſiſt his Majeſty, they ran up; and, meeting *Alexander Ruthuen*, all bloody, they ſaid this is the Traytor, and fell upon him, and killed him; and, that they afterwards entered the Chamber, where they ſaw only the King, and Sir *John Ramſay*; but that, ſoon after, *Thomas Cranſtoun*, followed by the Lord *Gowrie*, and ſeveral more, entered the Room, with their Swords drawn, and fought with the King's Friends, till Sir *John Ramſay*, gave Earl *Gowrie* a mortal Wound; and, upon his falling, *Cranſtoun*, and the reſt of *Gowrie*'s Party fled. 1600.

Sir *John Ramſay* depoſed, That, hearing his Majeſty cry out, he ran up to the Chamber, burſt open one of the Doors, and ſaw the King, and *Alexander Ruthuen* ſtruggling together: He thought his Majeſty had *Alexander*'s Head under his Arm; and that *Alexander*, who was almoſt down on his Knees, had his Hand upon his Majeſty's Mouth: That his Majeſty, ſeeing the Deponent, cried, Fy! ſtrike him, he has Armour on; and the Deponent, thereupon ſtriking *Alexander* with his Sword, the King ſhoved him out of the Door, down the Stairs; after which, the Deponent called out of the Window to Sir *Thomas Ereskin*, and the reſt of the King's Servants, who came up: The reſt of his Depoſition confirmed that of Sir *Thomas Ereskin*.

John Graham confirmed the Depoſition of the Duke of *Lenox*, and the Earl of *Mar*; adding, That, as he was at Dinner in the Hall, with the reſt of the Company, he ſaw the King, and *Alexander Ruthuen*, paſs through the Hall, towards the Gallery; and as this Deponent, *John Hamilton*, and others were following, *Alexander* cried back, Gentlemen, ſtay, for ſo is his Highneſs's Will.

Andrew Roy, one of the Baillies of *Perth*, depoſed, That he dined with the Company in Earl *Gowrie*'s Hall, the 5th of *Auguſt*; and that, ſtanding with the reſt before the Gate afterwards, and hearing the King cry out Murder, Treaſon, *&c.* he raiſed the Town to reſcue his Majeſty, and the Multitude aſſembled about Earl *Gowrie*'s Houſe; but, the Encounter being over, his Majeſty ordered them to diſperſe: However, it was ſome time before the People would be pacified, their Provoſt, Earl *Gowrie*, being killed.

Robert Chriſtie, Porter to the late Earl *Gowrie*, depoſed, That on the 5th of *Auguſt*, the Duke of *Lenox*, the Earl of *Mar*, and his Maſter, coming after Dinner to the Gate, my Lord Duke asked, if his Majeſty had paſſed the Cloſe; to which the Deponent anſwering, He had not, Earl *Gowrie* was angry, and ſaid, he lied, he was gone out at the Back-gate; to which the Deponent anſwered, That cannot be, my Lord, for I have the Key; and afterwards he ſaw his Majeſty looking out of the Window, and heard him cry Treaſon! Treaſon! Help, Lord *Mar!* Whereupon the Duke, the Earl of *Mar*, and the reſt, ran up ſtairs to the Gallery; and that Earl *Gowrie* coming from the Street, with a Steel Helmet on his Head, and two naked Swords in his Hands, accompanied by *Alexander* and *Harry Ruthuen*, *Patrick Eviot*, *Hugh Moncrief*, and *Thomas Cranſtoun*, all with drawn Swords, ran into the Houſe alſo; but what was done there, he knew not.

Alexander Blair depoſed, That on the ſaid 5th of *Auguſt*, he ſaw *Alexander* and *Harry Ruthuen*, and *Hugh Moncrief*, come down the little Stair-Caſe, where they and Lord *Gowrie* went up with naked Swords in their Hands.

William

1600. *William Reynd*, depoſed, That on the ſaid 5th of *Auguſt*, he ſaw, within Earl *Gowrie*'s Cloſe, after the Fray, *Patrick Eviot*, and *Hugh Moncrief*, both bloody, with their naked Swords in their Hands.

Thomas Burrell, Burgeſs of *Perth*, depoſed, That on the ſaid 5th of *Auguſt*, at the time of the Fray, entering Earl *Gowrie*'s Cloſe, he ſaw there with drawn Swords, *Alexander* and *Harry Ruthuen*, and *Hugh Moncrief* bloody in his Face; that, at the ſame time, he ſaw *Thomas Cranſtoun* come down the Back-Stairs, and took his Sword out of his Hand; and he heard *Alexander Ruthuen* cry out, for Fire and Powder.

Robert Brown one of his Majeſty's Servants, confirmed the Depoſitions of the Duke of *Lenox*; and the Earl of *Mar*, adding, that he followed them to the Room where his Majeſty was, up the Stair-Caſe; and at his firſt Entry he ſaw Earl *Gowrie* lie dead; and there were at that time with his Majeſty, Sir *John Ereskin*, Sir *Hugh Herris*, Sir *John Ramſay*, and *George Wilſon*.

Theſe Depoſitions were confirmed by ſeveral more of the like Tenor,

Sentence, to forfeit their Lands and Honours, as Traitors.

The Parliament, thereupon, decreed and declared, that the ſaid Earl *Gowrie*, and *Alexander Ruthuen* his Brother, were guilty of open and manifeſt Treaſon; and thereupon adjudged, that their Lands, Eſtates, and Honours, ſhould be forfeited.

The like Sentence paſſed againſt *Alexander* and *Harry Ruthuen*, Sons of the late *Alexander Ruthuen*, *Hugh Moncrief*, Brother to *William Moncrief*, and *Patrick Eviot* Brother to *Colin Eviot* of *Balhouſie*.

Several Acts paſſed againſt the Ruthuens.

An Act alſo was made, to diſinherit the Brethren, and all the Poſterity of Earl *Gowrie*, from enjoying any Heritage, Place or Office, in *Scotland*; and forbidding all Perſons, to move or interceed for them, upon High Pains.

By another Act, the Surname of *Ruthuen* was extinguiſhed; and ſuch of them as were innocent of this Treaſon, were ordered to take other Names.

By a third Act, the 5th of *Auguſt* was appointed to be kept as a Thankſgiving annually, for the King's Deliverance: And by a 4th Act, the Lands and Eſtate of *Ruthuen* were annexed to the Crown; and by ſeveral other Acts Sir *Thomas Ereskin*, afterwards Earl of *Kelly*, Sir *John Ramſay*, Sir *Hugh Herris*, and the reſt, who were more immediately concerned in the King's Preſervation, had Rewards conferred upon them by Parliament.

Remarks on Gowrie's *Conſpiracy.*

In the Year 1582. *William Ruthuen* whom King *James* VI. had lately created Earl *Gowrie*, with the Earl's of *Mar*, and *Lindſay*, and ſeveral other Lords of the Faction, ſeized on his Majeſty's Perſon, then about ſixteen Years of Age; made the Earl of *Arran*, his prime Miniſter, Priſoner, and compelled the Duke of *Lenox*, the Regent, to fly the Kingdom: After which they ſummoned and packed an Aſſembly of the States; where they compelled the Minor King to approve their Proceedings. Of which, *Cambden* relates, that even *Buchanan* declared his Abhorence.

The King having diſengaged himſelf, and got out of the Power of the diſaffected Lords, offered them a Pardon; which they were ſo far from accepting, that they entered into another Conſpiracy, to ſeize his Perſon: Whereupon they were commanded to depart the Realm; and ſeveral of them went to *Ireland*, the *Low Countries*, and *France*; but Earl *Gowrie* endeavoured to conceal himſelf in the Country. And now, the King having aſſembled a free Convention, the ſeizing of his Perſon was declared to be a treaſonable Act; while the Presbyterian Clergy, on the other Hand, being *convocated, by their own Authority, decreed the ſeizing of the King to be juſt; and declared, that thoſe, who did not approve of it, deſerved to be excommunicated.*

1600.

In the mean Time, the exiled Lords having concerted Meaſures with Earl *Gowrie*, returned on a ſudden to *Scotland*, in the Beginning of the Year 1584. and ſurprized the Town and Caſtle of *Sterling:* But the Miniſtry having ſome Intimation of the Plot, and making Earl *Gowrie* Priſoner, the reſt of the diſaffected Lords were defeated, and forced to fly their Country again; and Earl *Gowrie*, being brought to his Trial, for this third Conſpiracy againſt the King and Government, for making War on his Majeſty, and ſeizing the Fortreſſes of *Sterling* and *Perth*, was convicted, condemned, and beheaded, the ſame Day; for the Miniſtry were ſo well apprized of his Majeſty's merciful Diſpoſition, that they knew he would pardon the Earl again, if they did not diſpatch him, before the King had notice of his Condemnation; though his repeated Conſpiracy againſt the Government, made his Death in a Manner neceſſary.

His Majeſty did not only expreſs his Diſlike, of this haſty Execution, afterwards; but reſtored *John*, the late Earl's eldeſt Son, to his Honours and Eſtate; made his Brother *Alexander* one of the Gentlemen of his Bed-chamber; and their Siſter was a Maid of Honour to the Queen. But no Careſſes, or kind Uſage, could make any Impreſſion on the two Brothers. Their Father, indeed, was executed in the King's Minority, and, evidently, without his Conſent: Yet, as as it was tranſacted in his Reign, they looked on it, as an Indication of an ignoble and puſillanimous Spirit, not to revenge it on the King; and, thus, fourteen Years after their Father's Death, we find, they conſpired to ſeize, and murder his Majeſty, in the Manner above-related; and, as *Rapin*, himſelf, obſerves, Vol. 9. p. 195. of the *Octavo* Tranſlation, his Eſcape was, in a Manner, miraculous.

The Behaviour of the Presbyterian Clergy on this Conſpiracy.

Archbiſhop *Spotſwood* relates, that the News of this laſt Attempt on the King's Perſon, at *Perth*, being brought to *Edinburgh*, the Privy-Council ordered the Miniſters of the Town, to call their Pariſhioners to Church, and return God Thanks for his Majeſty's Deliverance; but they endeavoured to excuſe themſelves, as not being acquainted with the Particulars of what had happened. To take off which Pretence, it was anſwered, An exact Information of every Circumſtance was not neceſſary: Their Buſineſs was only to ſignify, the King had eſcaped a great Danger, and exhort the People, to thank God for ſo merciful a Providence. To which they replyed, *That nothing ought to be delivered from the Pulpit, without preciſe Certainty of the Truth; and, that every Thing mentioned in that Place, ſhould be ſpoken in Faith.* And, when no Arguments could prevail on them, the

1600. Council went in Proceſſion to the Market-Croſs; where the Biſhop of *Roſs* gave a Narrative of the Conſpiracy, and cloſed his Diſcourſe with a Thankſgiving. The next Week, when the King came to *Edinburgh*, there was a Sermon, on the Occaſion, preach'd by Mr. *Patrick Galloway*; and in *November* following, when the Parliament met, the Act above-mentioned was made, for obſerving the 5th of *Auguſt*, annually, as a Day of Thankſgiving; and thoſe Miniſters, who refuſed to ſolemnize it in *Edinburgh*, were ordered to depart the Town within eight-and-forty Hours, and not to preach under Pain of Death, in his Majeſty's Dominions: Whereupon three of the Number, *viz. Balcanqual*, *Watſon*, and Hall, thought fit to reconcile themſelves to the Government, and declare, *They were fully convinc'd of the Truth of* Gowrie's *Conſpiracy:* But before they returned to *Edinburgh*, they were obliged, publickly, (in the Churches aſſigned them) to declare their Belief of the treaſonable Attempts at *Perth*: and ask God and the King's Pardon, for queſtioning the Matter of Fact. 1600.

Rapin, Vol. 9. p. 195. of the *Octavo* Tranſlation, gives this ſhort Account of the Matter, *(viz.)* Some found out a Way more ready, and effectual, to prevent the King of *Scots* aſcending the Throne of *England*. The *Ruthuens*, Sons to Earl *Gowrie*, beheaded in 1584. conſpired againſt him; and, inviting him to their Houſe, on one Pretence or other, deſigned to murder him; *but he eſcaped by a Sort of Miracle:* The two *Ruthuens* were killed in the Attempt, and their Accomplices condemned to Death.

1600. 43 Eliz.

The Trial of ROBERT Earl of *Eſſex*, and HENRY Earl of *Southampton*, for *High-Treaſon*, before the Lord *Buckhurſt* High-Steward, and twenty-five other Peers, the 19th of *Feb.* 1600. 43. *Eliz.* 1600. 43 Eliz.

Trial of the Earls of Eſſex *and* Southampton, *for Treaſon. The Charge.*

THE Priſoners were indicted for High-Treaſon, in compaſſing, and imagining, the Death of the Queen, and the ſubverſion of the Government, and raiſing an Inſurrection and Rebellion, for that End; particularly, they were charged with conſpiring, to ſurprize her Majeſty in her Palace; with impriſoning ſeveral Members of the Privy-Council; inciting the Citizens of *London*, to Sedition and Rebellion; aſſaulting the Queen's Forces in the Streets; and holding out *Eſſex-Houſe* againſt her Majeſty.

The Evidence.

The Evidence, produced againſt the Priſoners, was, firſt, *Henry Witherington*, who depoſed, That the Priſoners defended *Eſſex-Houſe*, and impriſoned the Privy-Councillors.

Sir *Walter Ralegh* depoſed, That he met Sir *Ferdinando Gorges*, upon the *Thames*, who told him, that the Earl of *Eſſex* had a ſtrong Guard in his Houſe, and it was like to be a bloody Day's Work.

Sir *Ferdinando Gorges* Examination alſo was read, who depoſed, That the Earl of *Eſſex* ſent for him up to Town; complained of his Diſgrace at Court, which he could not endure, ſaid, that great Numbers of Noblemen, and Perſons of Quality, were diſcontented, and would join him; and deſired the Deponent's Aſſiſtance: That they had ſeveral Conſultations, concerning ſurprizing the Court, ſeizing the Tower, and making an Inſurrection in the City: That the Deponent diſuaded the Inſurrection; and the Earl of *Southampton* ſaid, *It was three Months ſince the Plot began, and ſhould they reſolve on nothing?*

The Examination of Sir *Charles Danvers* alſo was read, who depoſed, That the Priſoners conſulted to ſurpriſe the Court, and ſeize the Tower: That the Guards alſo, were to be ſecured, in order to get Acceſs to the Queen: And, that afterwards the Earl of *Eſſex* reſolved to call a Parliament to redreſs Grievances: And Sir *John Davies* gave the like Evidence.

Sir *Chriſtopher Blunt* confirmed the Evidence of the two laſt Witneſſes; and added, that the Earl intended to have altered the Government.

The Earl of *Rutland* depoſed, he heard the Earl of *Eſſex* cry out in the Streets, *England is bought and ſold to the Spaniards*; and, that the Earl of *Southampton* was a Malecontent, and confederated with *Eſſex*.

The Lord *Sands* depoſed, That the Earl of *Eſſex*, being repulſed at *Ludgate*, ordered his Followers to Charge: And there were other Witneſſes produced, that confirmed the Evidence already given.

The Earl of Eſſex's *Defence.*

To this, the Earl of *Eſſex* anſwered, That what he had done, was, in order to his own Defence, without any diſloyal Intentions to her Majeſty: He only deſigned to preſent himſelf before her, with eight or nine Perſons, to entreat her to remove ſome evil Counſellors, who had abuſed her with falſe Informations; particularly *Cobham*, *Cecil*, and *Ralegh*; concluding with Proteſtations of his Innocence, and, that he had never any Deſign upon the Crown of *England*, as the Attorney-General *(Coke)* had affirmed: And ſaid, he was no Favourer either of Papiſts or Sectaries.

The Earl of Southampton's *Defence.*

The Earl of *Southampton* acknowledged, their going through the City was a fooliſh Action; and, that their Deſign of going through the City with an armed Force, to Court, was only, that their Enemies might not hinder their Paſſage to the Queen; before whom they intended to proſtrate themſelves, and ſubmit to her Mercy: And, that he never heard the Proclamation, ſaid to be made by the Lord *Burleigh*.

They are both convicted.

Then the Lords, withdrawing for about half an Hour, returned, and brought in both the Priſoners GUILTY of High-Treaſon; and Sentence was pronounced againſt them accordingly.

Earl of Eſſex *beheaded,* Southampton *reprieved.*

On the 25th of the ſame Month, the Earl of *Eſſex* was beheaded, on a Scaffold within the *Tower*: He acknowledged, when he came to die, that his Puniſhment was juſt; and ſeemed moſt concerned, that he had drawn ſo many of his Friends

1600. 43 Eliz.

Remarks on the Trial and Execution of the Earl of Eſſex.

Friends into the ſame Guilt! As to the Earl of *Southampton*, he was ſuffered to live; but remained a Priſoner for ſome Time.

There appears to have been abundant Evidence againſt thoſe two noble Priſoners; and, indeed the Facts were ſo notorious, that there was no denying them: Therefore, the Evidence that was given by their Accomplices, and the Depoſitions read againſt them, which were, certainly, not legal Evidence, were altogether unneceſſary: But, much more, the Teſtimony Sir *Walter Raleigh* gave, *That he heard another ſay*, that the Earl of *Eſſex* had got a ſtrong Guard to defend his Houſe; and, there would be bloody Work, Sir *Walter* was thought to be too forward in giving his Voice, againſt an Enemy, when there was no Occaſion for it; and his being at the Execution of this Lord, was cenſured alſo, as an Indecency; it looking like a Triumph over an unfortunate Nobleman, with whom he had been at Variance.

As to the Story of the Queen's heſitating on the Execution of this Lord, and varying her Orders frequently, which has been the Foundation of ſo many Plays and Romances; if it be conſidered, that her Majeſty was in the Decline of Life, before *Eſſex* came upon the Stage, and near ſeventy, at the Time of the Conſpiracy, ſhe will, ſurely, be acquitted of any amorous Paſſion for him: Though it may be very innocently ſuppoſed, ſhe had a great Regard for this Nobleman, and would, gladly, have pardoned him, if he had not declared, it was inconſiſtent with her Safety: For he had been bred up in her Court from his Infancy; and was General in that popular Expedition, when *Cadiz* was taken by Storm, and ſo much Treaſure brought to *England*, as rendered him the Darling of the Court, as well as of the People. It was, therefore, with the utmoſt Regret, that the Queen found herſelf under a Neceſſity, to take away his Life; which ought to be remembered to her Honour, rather than made an Argument of a Criminal Paſſion.

1600. 43 Eliz.

The Trial of Captain THOMAS LEA, for *High-Treaſon*, at the *Old-Baily*, *London*, the 26th of *Feb.* 1600. 43 *Eliz.*

1600. 43 Eliz.

Lea's Trial. The Charge.

THE Indictment charged him with High-Treaſon, in compaſſing, and imagining, the Death of the Queen: The Overt Acts, laid in the Indictment, were, his applying himſelf to Sir *Robert Crofts*, on the 12th of the ſame Month of *Febr.* and endeavouring to perſuade him, to aſſiſt, in forcing the Queen to releaſe the Earl of *Eſſex*, then a Priſoner in the *Tower*; and, his repairing to the Queen's Palace the ſame Evening, in order to have executed his traiterous Purpoſes.

The Court refuſes his Challenges.

The Jurors being called over, the Priſoner challenged one of them peremptorily; but, the Court told him, they would not allow of ſuch Challenges: Whereupon, finding he was denied this Piece of Juſtice, he bid them proceed as they would; and twelve being ſworn, the Attorney-General opened the Indictment, and the Evidence; and, among other Things, obſerved, that the Priſoner had offered his Service to the Lord Admiral, and Mr. Secretary, to kill the Earl of *Eſſex*; and, they refuſing to be concerned in ſuch a Deſign, he would have made the ſame offer to the Queen; but the Attorney inſinuated, that this was in order to get an Opportunity of attempting ſomething againſt her Majeſty. To which *Lea* anſwered, he would have been the firſt Man to have gone againſt *Eſſex*, while he thought him a Traitor; and would have ventured his Life againſt any Man, in Defence of the Queen.

Then Sir *Robert Crofts*, being ſworn, depoſed, That on *Thurſday*, about four in the Evening, Captain *Lea*, the Priſoner, came to him, as he was going abroad, and told him, he ſhould not go out; he muſt needs ſpeak with him; and, taking the Deponent aſide, ſaid it would be a brave Act, to ſet the Lords *Eſſex* and *Southampton* at Liberty: That Sir *Walter Raleigh* might gain himſelf eternal Honour, and Love, if he would procure her Majeſty's Warrant, to free them, which he might compaſs by undertaking her Perſon; and the Deponent anſwering, *You may be ſure he will not do it*, Captain *Lea* replied, *If half a Dozen reſolute Men, ſuch as might have Acceſs to the Preſence, would ſtep unto the Queen, and kneel before her and never riſe till ſhe had ſigned a Warrant, and until the Earls of* Eſſex *and* Southampton *were brought into the Queen's Preſence, they might do it; and named Sir* Henry Nevil, *Sir* Jervis Clifton, *Sir* George Gifford, *Sir* Richard Weſton, *and themſelves.* And the Deponent objecting, that ſome might come upon them, and remove them from her Majeſty, he anſwered, *We might keep them out, by ſhutting the Door, and telling them that offered to come in, that, if any harm came to the Queen, if ſhe would do otherwiſe than well, be it at their Peril.* To which the Deponent anſwered, *he would ſleep upon it.*

Then the Depoſition of *William Poynes* was read, who depoſed, that he ſaw Captain *Lea*, the Priſoner, preſs towards the Privy-Chamber Door; and, miſtruſting the worſt, drew towards him, and obſerved he looked pale, his Countenance ſtern, and great Drops of Sweat ſtanding on his Face; and, leaning hard on the Deponent, the Captain ſaid, it was one of the Wonders of God, he was not in this Action with the Earl of *Eſſex*, he was ſo well acquainted with him; and asked the Deponent, whether the Queen was at Supper. To which he anſwered, No: But ſaid, if the Captain was ſo well acquainted with the Earl, he might do good Service; for it was likely he knew ſomewhat of the Plot; and that Captain *Lea* anſwered, Not I; but you ſhall hear of more Villanies and Knaveries yet.

Then a Letter was read, from the Earl of *Eſſex*, to the Deputy of *Ireland*, recommending Captain *Lea* to the Deputy for Preferment.

Part of the Priſoner's Confeſſion alſo was read, wherein he ſaid, he loved and honoured the Earl

1600. 43 Eliz.

Earl of *Eſſex*, as much as any Man in *England*, ſave Sir *Henry Lea:* That Sir *Chriſtopher Blunt*, being Marſhal of the Army in *Ireland*, ſent him (the Priſoner) to *Tyr-Oen*, the General of the Rebels; and that he found him peremptory, uſing inſolent Speeches, and condemning the *Engliſh* Nation, as a baſe People; adding, the Earl of *Eſſex*, was ſent to kill him, but he ſhould not compaſs it: That any of his Slaves might eaſily kill the Earl, but he would not take the Life of any: And further, that if the Earl would follow his (*Tyr-Oen*) Plot, he would make him the greateſt Man in *England*.

Then the Priſoner inſiſted, that his whole Examination might be read; but the Attorney-General would not admit of it, but ſtill recited theſe Words: *That they would go to her* (the Queen) *and never leave her, till ſhe had done it:* So that they intended, he ſaid, to have put a Force upon the Queen, by his own Confeſſion: And this was High-Treaſon, in which the whole Court agreed. Mr. Attorney alſo urged, as an Aggravation of his Crime, that he had been once before pardoned by her Majeſty.

Lea's Defence.

Captain *Lea*, the Priſoner, ſaid, in his Defence, that he never intended to be an Actor in the Enterprize himſelf; neither did he perſuade any Man to undertake it, but only ſpoke conditionally, *If ſuch a Thing could be done.* He acknowledged alſo, that he was at the Privy-Chamber Door, and ſpoke the Words ſpecified in *Poynes*'s Depoſition: But obſerved, that he had no Company with him, or ſo much as a Dagger, or any Thing about him, that could ſhew he meant to do the Queen any Harm, and ſaid, he had been there five hundred Times before, without any Notice being taken of it: That he had no Reaſon to venture any Thing in the Earl of *Eſſex*'s Service; but had ſpent his Blood in her Majeſty's, and was ready to do it again: and declared, he was not privy to the Earl of *Eſſex*'s Inſurrection.

He is convicted.

The Jury, after a ſhort Receſs, bringing in the Priſoner GUILTY, Mr. Attorney ſaid, he would do well to confeſs the Matter now, and who ſet him on: But he anſwered, I am not a Fool, to be ſet on, like a Boy upon a Bear: No Body ſet me on; for I endeavoured nothing.

And condemned.

Judgment being pronounced on him as a Traitor, he deſired my Lord of *London*, that one might be ſent him, fit for a Man in his Condition. My Lord asked, if he would have a Jeſuit, or a Prieſt; but the Captain anſwered, No, I am a Proteſtant: I deſire a Miniſter, and to receive the Sacrament; and that my Son may have the little I have got together: He may do his Country good Service one Day.

He was executed the Day after his Trial, as a Traitor, at *Tyburn*, proteſting to the Miniſter, to whom he freely confeſſed the reſt of his Sins, that he never intended any ſuch Thing againſt the Queen, as was laid to his Charge. 1600. 43 Eliz.

He is executed.

Profeſſes his Innocence.

Mr. *Cambden*, in his Hiſtory of Queen *Elizabeth*, *Anno* 1600. relates, that this *Thomas Lea* (a Kinſman of Sir *Henry Lea*'s) came to Sir *Robert Crofts*, Captain of a Man of War, and told him, it would be a glorious Enterprize, for ſix brave mettled Fellows, to go to the Queen, and compel her to diſcharge *Eſſex*, *Southampton*, and the reſt, that were in Priſon. (He was a Man himſelf, of great Aſſurance, and Reſolution; had commanded a Company in *Ireland*, was very intimate with *Tyr-Oen*, and an abſolute Creature of the Earl of *Eſſex*'s.) This did *Crofts* immediately diſcover to the Council; inſomuch, that *Lea* was ſought for, and found in the Dusk of the Evening, about the Door of the Queen's Privy-Chamber. He ſeemed very thoughtful, was extreme pale, and in a great Sweat; and frequently asked, *Whether her Majeſty was ready to go to Supper?* and *Whether the Council would be there?* In this Poſture he was ſeized, and examined; the next Day had his Trial, and by *Croft*'s Evidence, and his own Confeſſion, convicted; and thereupon condemned, which Mr. *Cambden* obſerves, appeared a very ſeaſonable Piece of Rigour, as the times then were.

Mr. Cambden's Account of Lea.

Remarks on Lea's Trial.

The Courts of Law, it appears, ſtill acted very arbitrarily, at the Trials of State Priſoners: For here, we ſee the Judges denying the Priſoner the Benefit of his Challenges, which was his undoubted Right. We find alſo *Poynes*'s Depoſition read againſt him; whereas, by Act of Parliament, the Witneſſes ought to have been produced in Court, Face to Face; and, without two ſuch Witneſſes, a Man could not legally have been convicted of High Treaſon. As for his own Examination, out of Court, that could not have ſupplied the Place of another Witneſs; unleſs he had confirmed it, by a Confeſſion at his Trial. So that, though there was little Room to doubt his Guilt, yet we may ſay, he was not legally condemned. As to his profeſſing his Innocence to the laſt; all that he could mean by it was, that there was no formed Deſign: He only propoſed ſuch a Thing, as feaſible: But it has always been held, *That he, who propoſes the putting a Force upon his Sovereign, is guilty of High Treaſon, though he never attempt it.* And what he meant, by endeavouring to force his Way into the Privy-Chamber, without a Weapon, or any one to ſecond him, is not eaſy to be conceived. I am apt to think, the Man was a little diſordered in his Senſes. Certain it is, he was very little afraid of Death, by his Behaviour, both at his Trial, and Execution.

1600. 43 Eliz.

Trial of Blunt, &c.

The Trial of Sir CHRISTOPHER BLUNT, Sir CHARLES DAVERS, or DANVERS, Sir JOHN DAVIS, Sir GILLY MERRICK, and HENRY CUFFE, as Accomplices in the Earl of *Eſſex*'s Treaſon, before Commiſſioners of *Oyer* and *Terminer*, the 15th of *March*, 1600. 43 *Eliz.*

1600. 43 Eliz.

Very defective.

THIS alſo ſcarce deſerves the Name of a Trial, the Indictment, and moſt of the Evidence being wanting: But it is

The Charge.

to be preſumed, the Indictment charged them, with compaſſing the Death of the Queen, levying War, &c. as the Indictments againſt the Earl of *Eſſex* and *Northampton*, had done.

Of

1600. 43 Eliz.

Some of the Priſoners confeſs the Charge.

Of which Charge, it ſeems, the Priſoners deſired they might confeſs Part, and plead guilty to the reſt: But, being informed, they muſt plead *Guilty*, or *Not Guilty*, to the whole, they all pleaded *Not Guilty:* After which, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*, confeſſed their Deſign was, to come to the Queen, with ſuch a Force, as could not be reſiſted; and to require of her certain Conditions and Alterations of Government: But that they intended no perſonal Hurt to the Queen herſelf; and that was the Reaſon they could not confeſs the whole Indictment, which charged them with compaſſing the Death and Deſtruction of the Queen.

The putting a Force upon the King, conſtrued a Deſign upon his Crown and Life.

The Court replied, that a Conſpiracy to put a Force upon the Queen, was Treaſon: That the Law conſtrued ſuch an Attempt to be a Deſign upon the Prince's Life, and Crown: That, when a Subject took upon him to give Law to the King, he took the Sword out of his Hand, and the Crown off his Head; and this always ended in the Death and Deſtruction of the King, as was evident from Examples, both at Home and Abroad; and therefore it was highly reaſonable, that the Law ſhould conſtrue the putting a Force upon the King, to be an Attempt againſt his Life.

Whereupon Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*, ſaid, Since they had better conſidered the Matter, they were ſorry they had given the Court ſo much Trouble, and had not confeſſed the Indictment, at firſt.

The Evidence againſt Cuffe.

Then the Queen's Counſel produced their Evidence againſt *Henry Cuffe*; and particularly the Examination of the Earl of *Eſſex*, who had confeſſed, that *Cuffe* principally incited him to commit theſe Treaſons, with which he was charged. Depoſitions alſo were read, to prove *Cuffe* at the Conſultations with the Earl of *Eſſex*, at *Drury* Houſe, and his defending *Eſſex-Houſe* againſt the Queen's Forces. To which *Cuffe* anſwered, that he was ſhut up in *Eſſex-Houſe*, againſt his Will.

Againſt Merrick.

The Evidence againſt Sir *Gilly Merrick*, (though the Editor does not tell us, what that Evidence was) it is proved, that he commanded the Garriſon in *Eſſex-Houſe*, fortified it, and appeared the moſt active of any of the Earl of *Eſſex*'s Adherents, againſt the Queen's Forces; and that, the Day before that Rebellion, he cauſed the Play of the depoſing King *Richard* II. to be Acted.

Then the Jury being withdrawn, in a little Time returned, and brought in all the five Priſoners GUILTY: And Sentence being pronounced on them as Traitors, *Cuffe* and *Merrick* were thereupon drawn to *Tyburn*, and executed there, the 13th of *March:* But Sir *Chriſtopher Blunt*, and Sir *Charles Davers*, had the Honour of being beheaded on *Tower-Hill*, the 18th of the ſame Month; and Sir *John Davis* was pardoned.

1600. 43 Eliz.

They are all convicted, and condemned. Two hanged, and two beheaded. Davis *pardoned.*

Sir *Chriſtopher Blunt*, in his Speech on the Scaffold, declared that, when the Earl of *Eſſex* was in *Ireland*, he told him, he reſolved to ſend over his beſt Troops from thence to *England*, and to land them at *Milford Haven:* And after he had aſſembled the reſt of his Forces, he intended to have marched with them, directly to *London*; but that he *(Blunt)* diſſuaded *Eſſex* from it, as being a deſperate Attempt: He acknowledged, indeed, that he had adviſed the Earl, to get the Court into his Power, and to make Conditions for himſelf: But, in all their Debates, they fully reſolved not to touch her Majeſty's Perſon; *though, had they failed to attain their Ends, he would not ſay, but it might have coſt her Majeſty her Life:* He declared, he died a Catholick; and, when a Proteſtant Miniſter came to tender his Service to him, in his laſt Moments, he deſired he might not be diſturbed; and contented himſelf with ſome pious Ejaculations of his own, he died, ſays my Author, with great Reſolution.

Blunt's Speech on the Scaffold.

Cuffe declared alſo, at his Execution, that they had an Intention to force their Way into the Queen's Preſence; but ſaid, he never perſuaded any Man to take up Arms againſt her Majeſty: And as to Sir *Charles Davers*, and Sir *Gilly Merrick*, I do not find they made any Speeches at their reſpective Executions.

Cuffe's Declaration.

Remarks on the Trial of Blunt, *&c.*

Theſe Trials, I have already obſerved, are very deficient, both as to the Charge, and the Evidence; and no leſs ſo, as to the Priſoners Defence. There is no doubt, indeed, to be made of the Priſoners Guilt, where ſo many thouſands were Witneſſes of the Facts they were charged with. However, the Teſtimony produced againſt them, was certainly not legal Evidence, conſiſting of the Depoſitions of abſent Witneſſes, and ſome of it the Confeſſions of the Earl of *Eſſex*, and his Accomplices, who ſtood convicted and attainted of the ſame Treaſons. The Law, 'tis true, was much the ſame then, as it is now: But the Court then acted very arbitrarily, and frequently cauſed Men to be convicted on ſuch Evidence, as the Judges themſelves knew was not legal; and which, at this Day, would not be admitted to be given in Caſes of this Nature.

1603. 1 Jac. I.

Markham's Trial.

The Trial of Sir GRIFFIN MARKHAM Knight, Sir EDWARD PARHAM Knight, GEORGE BROOKE Eſq; BARTHOLOMEW BROOKESBY Eſq; ANTHONY COPLEY, WILLIAM WATSON, Prieſt, and WILLIAM CLARKE, Prieſt, for *High-Treaſon*, at *Wincheſter*, the 15th of *Novemb.* 1. *Jac.* I. 1603.

1603. 1 Jac. I.

The moſt defective of any of them.

THIS has the leaſt Appearance of a Trial, of any Thing we have ſeen yet, containing little more than an Abſtract of the Charge, without the Evidence, and very little of the Defence.

The Charge.

The Indictment charged, that the Priſoners conſulted with the Lord *Gray* and others, traiterouſly to ſurprize the King, and the young Prince, at *Greenwich*, and to carry them to the

1603. 1 Jac. I.

Tower; to ſeize the Treaſure and Jewels there, to effect their Purpoſes; and agreed, that the Lord Chancellor, Treaſurer *Cecil*, and the Chief Juſtice, ſhould be removed, and cut off: That, if their Project of carrying the King to the *Tower* failed, then they ſhould convey him to *Dover*; and either there, or in the *Tower*, the King was to have been kept three Months: That they would, in the mean Time, have required of his Majeſty, 1. A General Pardon; 2. A Toleration of Religion; and that the Papiſts ſhould be admitted to the Council-Board, and to Poſts in the Government, as well as Proteſtants; and, 3. That the King ſhould remove, and cut off, the aforeſaid Counſellors, and others, who ſhould be thought to hinder their Enterprize. *Watſon* particularly was charged with deviſing an Oath to be taken by the Conſpirators, for the Preſervation of the King's Perſon, the Advancement of the Catholick Religion, and for concealing their Secrets: And it was agreed, *That every Thing ſhould be tranſacted in the King's Name*, and particularly, that the Lord-Mayor, and Aldermen, ſhould be ſent for, in his Majeſty's Name, and kept in ſafe Cuſtody till they gave Hoſtages, not to oppoſe their Deſigns, and promiſed, to furniſh them with ſuch Proviſions and Neceſſaries, as the Conſpirators ſhould require of them.

There is no Account of the Evidence that was given at theſe Trials, as hath been obſerved already: And, as to the Defence, the Editor of this Piece only tells us, that *Brooke* pretended, he had a Letter from his Majeſty, authorizing him to ſound the Deſigns of the Conſpirators: But he could produce no ſuch Letter; and the King declared, he never wrote any ſuch Letter.

What appears of their Defence.

Markham ſaid, he had been miſled by *Watſon*, the Prieſt, who aſſured him, *That the King, before his Coronation, was not an actual, but a political King; and therefore no Treaſon could be committed againſt him:* And *Brookesby* declared, he was drawn into this Plot by *Watſon*, the Prieſt.

Sir *Edward Parham* acknowledged alſo, that he was dealt with by *Watſon*, to take the aboveſaid Oath, and to concur in the Enterprize, for the Advancement of the Catholick Religion.

They are convicted, and condemned. Brook, *and the two Prieſts only executed.*

The Jury found all the Priſoners GUILTY, and Judgment of High-Treaſon paſſed againſt them; but only *George Brooke*, Brother to the Lord *Cobham*, with the two Prieſts, *Watſon* and *Clarke*, were executed. The Editor of theſe Trials concludes his Narrative, with his Majeſty's Warrant to the Sheriff of *Hampſhire*, to ſuſpend the Execution of the Lord *Cobham*, the Lord *Gray*, and Sir *Griffin Markham*; with which theſe Priſoners were not acquainted, till they had mounted the Scaffold, performed their Devotions, and prepared themſelves for the Block. The Lord *Gray* died in the *Tower*, not long after: The Lord *Cobham* obtained his Liberty; but, his Eſtate being confiſcated, lived a great while very miſerably. Sir *Griffin Markham* alſo was releaſed at length, and went beyond Sea; but, having loſt his Eſtate, was reduced to great Diſtreſs. *Parham*, *Brookesby*, and *Copley*, alſo were reprieved; but it does not appear what become of them.

1603. 1 Jac. I.

The Warrant for ſuperſeding the Execution of the two Lords, and *Markham*, being written in the King's own Hand, and eſteemed a Curioſity, I ſhall give it the Reader *Verbatim*.

King James's Warrant for ſuſpending the Execution of the two Lords and Markham.

'ALthough it be true, that all well-governed and flouriſhing Kingdoms, and Commonwealths, are eſtabliſhed by Juſtice; and that theſe two Noblemen by Birth, that are now upon the Point of Execution, are for their treaſonable Practices condemned by the Laws, and adjudged worthy of the Execution thereof, to the Example and Terror of others: *The one of them having practiſed the Overthrow of the whole Kingdom, and the other for the Surprize of our own Perſon:* Yet in regard that this is the firſt Year of our Reign, in this Kingdom; and that never King was ſo far obliged to his People, as we have been to this, by our Entry here, with ſo hearty and general an Applauſe of all Sorts; among whom all the Kin, Friends, and Allies, of the ſaid condemned Perſons, were as forward and dutiful as any other our good Subjects: As alſo that, at the very Time of their Arrainment, none did more freely and readily give their Aſſent to their Conviction, and to deliver them into the Hands of Juſtice, than ſo many of their neareſt Kinſmen and Allies (as being Peers) were upon their Jury: As likewiſe, in regard that Juſtice hath, in ſome ſort, had its Courſe already, by the Execution of the two Prieſts, and *George Brooke*, that were the principal Plotters and Inticers of all the reſt, to the embracing the ſaid treaſonable Machinations: We, therefore, being reſolved to mix Clemency with Juſtice, are contented, and by theſe preſents command our Sheriff of *Hampſhire*, to ſuperſede the Execution of the ſaid two Noblemen, and to take them back to their Priſon again, while our further Pleaſure be known. And, ſince we will not have our Laws to have Reſpect to Perſons, in ſparing the Great and ſtriking the meaner Sort, it is our Pleaſure, that the like Courſe be alſo taken with *Markham*, being ſorry from our Heart, that ſuch is not only the heinous Nature of the ſaid condemned Perſons Crime, but even the Corruption is ſo great of their natural Diſpoſition, as the Care we have for the Safety and Quiet of our State, and good Subjects, will not permit us to uſe that Clemency towards them, which, in our own natural Inclination, we might very eaſily be perſuaded unto.

Remarks on the Trial of Markham *&c.*

As to the Trial of the two Lords, *Cobham* and *Gray* (before their Peers) I meet with no manner of Account of it; and the Trials of the Commoners are very imperfect, as has been obſerved already: But, from what we have, there ſeems to have been two Plots: The one, to have ſeized the King's Perſon, and the Prince, and to have compelled his Majeſty, to have changed his Miniſtry, and granted a general Liberty of Conſcience, which was the Charge againſt the Priſoners mentioned in the preſent Trial: The other, a Plot to depoſe King *James*, and place the Lady *Arabella Stuart* upon the Throne: with which the Lord *Cobham* and Sir *Walter Ralegh* were charged. But I

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1603. 1 Jac. I.

Treaſon may be committed againſt a King out of Poſſeſſion.

am apt to think, neither of theſe Plots was brought to any Maturity.

The moſt remarkable Thing in theſe Trials was, that the Priſoners were indicted for a Conſpiracy againſt the King, before he was crowned, and before he ſet his Foot upon *Engliſh* Ground. *Watſon* and *Clarke*, the two Prieſts, it ſeems, had taught their Accomplices, that no Treaſon could be committed againſt a King out of Poſſeſſion of the Government: And we find the Regicides afterwards copying after them, and making that a Part of their Defence, that King *Charles* I. was depoſed, and out of the Exerciſe of the Government and therefore, their murdering him could not be Treaſon: And Sir *Harry Vane* alſo made the like Defence, when he was indicted for making War againſt King *Charles* II. and keeping him out of the Poſſeſſion of his Throne: But the Judges cited this Precedent of *Watſon* and *Clarke*, to ſhew them, that Treaſon might be committed againſt a King, before he was crowned, or had entered on the Adminiſtration of the Government; for that the King is King, to all Intents and Purpoſes, immediately upon the Demiſe of his Predeceſſor: *This was the unanimous Opinion of the Judges at the Reſtoration.*

1603. 1 Jac. I.

1603. 1 Jac. I.

The Trial of Sir WALTER RALEGH Knight, for *High-Treaſon*, before *Henry Howard* Earl of *Suffolk*, the two Chief Juſtices *Popham* and *Anderſon*, and other Commiſſioners of *Oyer* and *Terminer*, at *Wincheſter*, the 17th of *Novemb.* 1603. 1 *Jac.* I.

1603. 1 Jac. I.

The Trial of Sir Walter Ralegh, *for High Treaſon.*

The Charge.

THE Indictment charges the Priſoner with High Treaſon, in compaſſing and imagining to depoſe and deſtroy the King; and particularly that he met and conſulted with the Lord *Cobham*, how to advance the Lady *Arabella Stuart* to the Throne; and that, in order to it, the Lord *Cobham* was to go over to the Archduke, the King of Spain, and the Duke of *Savoy*, to procure their Aſſiſtance, and carry Letters from the Lady *Arabella*, with him, promiſing ſhe would procure a Peace between *England* and *Spain*, tolerate Popery, and be directed by them in her Marriage; and that *Cobham*, at the Inſtance of Sir *Walter*, did write to *Aremberg*, the Archduke's Ambaſſador, to obtain 600,000 Crowns, for carrying on theſe Deſigns; which Sum the Ambaſſador promiſed to pay: That *Cobham* promiſed Sir *Walter* 8000 Crowns of the Money, which he agreed to accept; and that Sir *Walter* alſo had publiſhed a Book againſt the King's Title.

Sir *Edward Coke*, the Attorney-General, having opened the Indictment, and given Sir *Walter Ralegh* a great deal of ſcurrilous Language, proceeded to produce the Evidence:

The Evidence.

Depoſitions of Lord Cobham.

And firſt, the Examination of the Lord *Cobham*, was read, wherein he confeſſes his going over to *Flanders*, to the Archduke and getting a Paſs, to go to *Spain*, to ſollicit that King for 600,000 Crowns; and that he was to return home by *Jerſey*, and conſult Sir *Walter Ralegh* there, concerning the Diſtribution of the Money among the Diſaffected in *England*: And further depoſed, that he had not entered into theſe Courſes, but by the Inſtigation of Sir *Walter*, curſing him, and calling him Villain and Traytor for ſeducing him. A Letter alſo of the Lord *Cobham*'s was read, of the ſame Tenor.

Of Lawrency.

The Examination of one *Lawrency* alſo was read, who depoſed, that Sir *Walter* ſupped with *Cobham* that Evening *Cobham* went to *Aremberg*, the Archduke's Ambaſſador.

The Priſoner's Examination read.

Then Sir *Walter*'s own Examination was read, wherein he ſays, *Cobham* offered him 8000 Crowns, if he would promote a Peace between *England* and *Spain*: To which the Deponent replied, when I ſee the Money, I will tell you more: For he thought it one of Lord *Cobham*'s idle Conceits, and therefore made no Account of it.

Cobham's Depoſition alſo, concerning the Book, was read, wherein he depoſed, that he had a Book from *Ralegh*, written againſt the King's Title; and *Ralegh* ſaid, it was fooliſhly written.

The only living Witneſs produced againſt the Priſoner, was one *Dyer*, who depoſed, that he heard a Gentleman ſay, at *Liſbon*, the King would never be crowned; for Don *Ralegh*, and Don *Cobham*, would cut his Throat, ere that Day came. *Hearſay.*

Then a Letter of the Lord *Cobham*'s was produced, where he ſays, that *Ralegh* ſent to him in the *Tower*, to retract his Evidence; and that *Ralegh* was to have had 1500 *l. per Annum* of the Spaniard, to give Intelligence when any Thing was deſigned againſt the *Spaniſh* Territories. *Letter of* Cobham's.

Sir Walter's *Defence.*

To this Sir *Walter Ralegh* anſwered, that he knew nothing of the Lord *Cobham*'s Practices with *Aremberg*, and proteſted, he had never heard of the Name of the Lady *Arabella Stuart*: That it was very unlikely he ſhould ſend Lord *Cobham* to *Spain*; and more unlikely, that *Spain* ſhould attempt another Enterprize againſt *England*, which had met with ſo many Repulſes, and their Royal Navy now deſtroyed, and ſunk to nothing; and that the Crown of *Spain* was too much impoveriſhed at this Day, to lend 600,000 Crowns on ſo precarious a Project: That it was very unlikely alſo, he ſhould promote a Peace with *Spain*, who had written a Book expreſly againſt a Peace, which he intended to preſent to his Majeſty: That it was not enough to accuſe a Man generally; but the Lord *Cobham* ought to give ſome Account of the Reaſon of the Undertaking: Some other Proof ought to be produced, beſides the Depoſition of one who acknowledged his Guilt: There ought to be two credible Witneſſes, brought Face to Face, in Caſes of Treaſon; and here had not one Witneſs appeared: And as to the Book he was charged with, he had it in the late Lord Treaſurer's Study, who had written in it, *This is the Book of* Robert

Inſiſts on two Witneſſes.

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Robert Snaggs. That he never read it, commended it, or communicated it to any Man; and the Book had been burnt long ago.

Then he returned to ſpeak to the firſt Part of the Charge, and ſaid, it was not likely, that he, who had ſpent 40,000 Crowns againſt the *Spaniard*, ſhould now become ſo affected to him, as to accept a Penſion from that Crown: And in Anſwer to the Depoſition of the Lord *Cobham*, he produced a Letter from the ſame Lord, written after his Examination, when he was ſick, and like to die; wherein he ſays, *Seeing myſelf ſo near my End, for the Diſcharge of my Conſcience, and freeing myſelf from your Blood, which elſe will cry Vengeance againſt me, I proteſt, upon my Salvation, I never practiſed with* Spain *by your Procurement. God ſo comfort me in this my Affliction, as you are a true Subject, for any Thing I know. I will ſay as Pilate,* Purus ſum a ſanguine hujus: *So God have Mercy upon my Soul, as I know no Treaſon by you.*

Lord Cobham *retracts his Evidence.*

Reply to the Defence.

To this Defence the Attorney-General replied, chiefly with Invectives and ill Language, telling Sir *Walter*, he was the moſt notorious Traitor that ever came to the Bar; and that when he had taken off the King, he would have altered Religion: That he was a Monſter, a Viper, had an *Engliſh* Face, but a *Spaniſh* Heart; and that the Witneſſes need not be brought Face to Face: And the Lord Chief Juſtice added, that the Statute, which required this, was repealed; in which the reſt of the Court concurred.

The Attorney-General alſo ſaid, that the Crown could never ſtand a Year upon the King's Head, if a Traitor might not be condemned by *Circumſtances:* That it did not conſiſt with the King's Safety, that the Priſoner ſhould be aquitted; proteſting before God, that he never knew a clearer Treaſon, and that Sir *Walter* was the moſt vile and execrable Traitor that ever lived; after which followed this inimitable Dialogue.

A Dialogue between Coke, *the Attorney-General, and Sir* Walter.

Ralegh. You ſpeak indiſcreetly, and barbarouſly.

Att. Gen. I want Words to expreſs thy viperous Treaſons.

Ralegh. I think you want Words, indeed; for you have ſpoken one Thing half a dozen Times.

Att. Gen. Thou art an odious Fellow; thy Name is hateful to all *England* for thy Pride.

Ralegh. It will go near to prove a meaſuring Caſt, between you and me, Mr. Attorney.

Other Evidence produced.

Then Mr. Attorney produced Lord *Cobham's* Letter, wherein he ſays, *Ralegh* ſent to him in the *Tower*, to retract what he had ſaid. To which *Ralegh* anſwered, he confeſſed he did ſend a poor Fellow, to throw a Letter into his Window, with theſe Words, *viz. You know you have undone me: Now write three lines to juſtify me.*

The Lord Chief Juſtice then demanded of the Priſoner, what he ſaid to his being promiſed a Penſion of 1500*l. per Annum.*

To which he anſwered, Cobham *was a baſe, diſhonourable, poor Soul:* And the Chief Juſtice replied, I perceive you are not ſo clear a Man as you have proteſted all this while.

The Lady Arabella *profeſſes her Innocence.*

During the Trial, the Lord Admiral *Nottingham*, being in Court with the Lady *Arabella*, ſtood up, and declared, that the Lady proteſted, upon her Salvation, that ſhe never dealt in any of thoſe Things, and ſo deſired him to inform the Court: She acknowledged, indeed, ſhe received a Letter from the Lord *Cobham*, to prepare her; but ſhe laught at it, and immediately ſent the Letter to the King.

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The whole Evidence being given, and ſummed up, the Jury withdrew, and within a Quarter of an Hour, brought the Priſoner in GUILTY; and Judgment paſſed on him, as a Traitor.

Sir Walter convicted.

Remarks on the Trial.

Never was Man convicted on ſo ſlender an Evidence. There was nothing, but the Depoſition of the Lord *Cobham*, that affected him; and that he had ſolemnly retracted: And, even this Witneſs was not produced in Court, the Judges declaring it was not neceſſary; and, that the Statute of the 5th and 6th *Edw.* VI. (which requires that two Witneſſes ſhould give their Evidence, *viva voce*, in Caſes of Treaſon) was repealed. But it is remarkable, that in this, and the former Trials, where the Court declared, that Statute was not in Force, they never ſpecified by what Act it was repealed. And, indeed, there is no ſuch Act in the Statute-Book: So that, whether Sir *Walter* was guilty or not, both he and many more were unjuſtly convicted, in that Age, for want of two Witneſſes produced perſonally againſt them as the Law required. It is obſervable, that ſome Judges uſed only to affirm, that the Law was *inconvenient*, and the Crown could not have Juſtice done, if that Opinion prevailed. And Sir *Edward Coke*, the Attorney-General, at this Trial, ſays, *That the Crown cannot ſtand a Year upon the King his Maſter's Head, if a Traitor could not be condemned by Circumſtances*; and, therefore, ſeems to argue, there was a Neceſſity that Statute ſhould be *ſuſpended*, in Favour of the Crown: But this great Lawyer does not attempt to ſhew, by what Act the 5th and 6th of *Edw.* VI. cap. 11. was repealed. He appears alſo, in his *Crown-Law*, to have been of another Opinion. But the moſt trifling Evidence that ever was given, was the Teſtimony of *Dyer* at this Trial, who, in order to influence the Jury, declared, *he heard* a Gentleman ſay at *Lisbon*, *Don Ralegh*, and *Don Cobham*, would cut the King's Throat before he was crowned.

Remarks on Sir Edward Coke's *Conduct.*

Give me leave to obſerve further, that nothing could leſſen Sir *Edw. Coke*'s Character more, than his Conduct at his Trial. To ſee the Inſolence, the Violence, and ſcurrilous Language, he uſed to run down a Man of Quality and Honour, who had been ſo Eminent in the Service of his Country: To ſee him wreſting and perverting the Law, contrary to his own Opinion, and Conſcience, to come at the Blood of an innocent Man; and this, either to make his Court to the new King, or out of Malice to the Priſoner; muſt give every Man a very mean Opinion of this Lawyer. And whoever have attended the Trials of State Priſoners, may have obſerved much of the like Practice in this Age. We have ſeen Gentlemen of the long Robe, Men of conſiderable Fortunes, whoſe Neceſſities could not prompt them to take away any Man's Life, one would think, for a little ſordid Pelf, labouring with all their Might,

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Might, and using all their Skill and Oratory, to hunt down Men marked out for Destruction; and this, perhaps, with no Malice to the Parties, or, with any other View, than that of being advanced from the Bar to the Bench; observing, that the Cutting of Throats, or ruining a Man by Colour of Law, when some vile Minister required it, was the ready Road to Preferment. But, whatever Reward those Time-servers may expect in this World, they, surely, never think of a Day of Retribution in the next.

Sir Walter's *Voyage to* Guiana.

Sir *Walter Ralegh*, having remained fourteen Years in the *Tower*, was set at Liberty; and, finding the Government in great Distress for Money at that Time, proposed an Expedition to *Guiana*, on the Continent of *America*, in order to possess himself of a Gold Mine, he had formerly discovered: Which the Ministry listened to with a great deal of Pleasure; and some Gentlemen of Quality and Fortune, with several considerable Merchants, contributed to the Expedition. But Sir *Walter* arriving with ten Ships at the Mouth of the River *Oronoque*, and detaching five Companies of Soldiers, under the Command of his Son Captain *Ralegh*, and Captain *Kemish*, to sail up and down the River, in search of the Mine; they found the Avenues to it so well fortified by the *Spaniards*, that after a fruitless Attack, in which Captain *Ralegh*, lost his Life, *Kemish* returned with the Boats to the Fleet.

His Son killed.

His Friend Kemish *kills himself.*

Sir *Walter*, deeply afflicted with his Son's Death, and the Miscarriage of the Attempt, it is said, reproached *Kemish*, telling him, he had ruined him, by putting him upon so Impracticable an Enterprize: Which Captain *Kemish* laid so much to Heart, that he retired to his Cabbin, and Shot himself; and, finding the Shot had not reached his Vitals, afterwards stabbed himself with a Knife in several Places, of which Wounds he died.

In Doubt if he should return home.

But I am apt to think, that Sir *Walter* rather reprimanded *Kemish*, for attacking the *Spaniards*, than for advising him to undertake this Expedition; for this it was, that rendered him obnoxious to the Government: We were, then, in full Peace with *Spain*; and, it was very natural to suppose, that the *Spaniards* would demand Satisfaction, for falling upon their Settlements; which Sir *Walter*'s Commission never authorized him to do. It is highly probable, that the *Spaniards* were not possessed of those Mines, when Sir *Walter* first discovered them; and, even when he undertook this Enterprize, neither the Ministry, or he, knew the *Spaniards* had fortified them; or we should never have attempted to have settled there, and disobliged an Ally the King was then so fond of, and actually engaged with in a Treaty of Marriage, between his Son, Prince *Charles*, and the Infanta: Therefore it appears, when Captain *Kemish* had committed Hostilities against the *Spaniards*, Sir *Walter* and all that were with him gave themselves over for lost, and proposed sailing for *France*, or *Italy*, as some of his Ships actually did: Only Sir *Walter* and four Ships, returned to *Ireland*; where he proposed to remain till he had made his Peace. But, being encouraged, to venture home, by some false or indiscreet Friends, he had no sooner landed but he was taken, and committed to the *Tower*, from whence he made his Escape; but, being re-taken, was ordered to be executed, by Vertue of a Sentence that had passed on him fifteen Years before, to give the *Spaniards* Satisfaction: Though the Treason, he had been condemned for, was, his being a Pensioner to *Spain*, and inviting the *Spaniards* to invade the Kingdom. An Offence, which, if he had been guilty of it, all the World looked upon as pardoned; Sir *Walter* being not only set at Liberty, but constituted General and Admiral, by a Commission that gave him Power of Life and Death, and even of pardoning capital Offences in others; which could not have been executed by a Person attainted of High-Treason, unless he had been, at least (virtually) pardoned by the King: However, the Lawyers, it seems, gave it as their Opinion, that nothing but express Words could amount to a Pardon of Treason; and he was thereupon beheaded, the 29th of *Octob.* 1618 in the 66th Year of his Age.

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Taken and escapes again. Re-taken and beheaded.

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11. Jac. 1603-4.

The Case of a Return of a Knight of the Shire, for the County of *Bucks*, between Sir FRANCIS GOODWIN, and JOHN FORTESCUE, 1603-4. 1 *Jac.* I.

1 Jac. I. 1603-4.

Goodwin's Case.

A Knight returned, and rejected, by the Clerk of the Crown, because he was outlawed.

ON Thursday, the 22d of *March*, Sir *William Fleetwood*, Knight of the Shire for the County of *Bucks*, moved the House, on the Behalf of Sir *Francis Goodwin*, who had been returned one of the Knights of the Shire for the said County, and refused by the Clerk of the Crown, because he was outlawed, (and thereupon a second Writ issued, and Sir *John Fortescue* returned;) that this Return might be examined, and Sir *Francis Goodwin* received a Member of the House.

Whereupon it was ordered, that Notice should be given to the Clerk of the Crown, to appear at the Bar the next Morning, and bring with him all the Writs of Summons, Indentures, and Returns of Elections, for the County of *Bucks*, this last Parliament; and that Notice should be given to Sir *Francis Goodwin*, to attend in Person, and represent the State of his Case, *Ore Tenus*.

The Clerk of the Crown attended accordingly, the next Day, with the Writs, *&c.* and Sir *Francis Goodwin*, having made a Representation, of his Case, was ordered to withdraw; and, after a long Debate, the Question being put, Whether Sir *Francis Goodwin* was lawfully elected, and returned, one of the Knights for *Bucks*, and ought to be admitted and received as a Member of that House? It was resolved in the Affirmative; and thereupon the Clerk of the Crown was commanded to file the first Indenture of Return: And it was ordered, that

Received by the House, notwithstanding.

1603-4. 1 Jac. I.

Sir *Francis* ſhould immediately take the Oaths, and his Place in the Houſe; which he did accordingly. On Tueſday, the 27th of *March*, 1604. Sir *Francis Bacon*, reporting a Conference with the Lords on another Subject, ſaid, the Lords touched on the Caſe of Sir *Francis Goodwin*, and deſired to be more particularly informed, concerning it, by that Houſe: But Anſwer was made (by the Commitee of the Commons) that they had no Warrant from the Houſe to ſpeak to it.

The Lords inquire into the Reaſons of it.

The ſame Day a Meſſage came from the Lords, deſiring, that the Committee of the Commons might, at the next Conference, be authoriſed to treat, concerning the Caſe of Sir *Francis Goodwin*, Knight of the Shire for *Bucks*.

The Commons refuſe a Conference on that Subject.

Which Meſſage being debated, it was urged by ſome Members, that they ought not to give an Account to the Lords of their Proceedings in the Houſe: But that the Speaker ſhould repreſent to his Majeſty, that, as the Judgment of Sir *Francis Goodwin*'s Caſe had paſſed the Houſe, it ought not to be reverſed by them: And a Preſident of the 27th of *Eliz.* was cited; where a Bill, brought down from the Lords, being rejected, on the firſt Reading, and the Lords ſending to demand a Reaſon of their Judgment, it was denied to yield any Reaſon.

And the Queſtion being put, Whether they ſhould confer with the Lords, on the Caſe of Sir *Francis Goodwin?* It paſſed in the Negative: And the Commons ſent a Meſſage to the Lords, that they conceived, it did not ſtand with the Honour and Order of the Houſe, to give an Account of their Proceedings.

His Majeſty interpoſes.

This produced another Meſſage from the Lords, importing, that their Lordſhips taking notice of the Return of the Sheriff of *Bucks* to the King, his Majeſty conceived himſelf engaged, and touched in Honour, that there ſhould be a Conference between the Houſes on that Subject.

The Commons offer his Majeſty the Reaſons of their Judgment.

Wherupon the Commons moved, to have Acceſs to his Majeſty; and Eight the next Morning being appointed for their attending him, a Commitee was appointed to attend his Majeſty, with the Speaker, and relate the Reaſons of their Proceedings, in the Caſe of Sir *Francis Goodwin*; which the Committee did accordingly.

On Thurſday, the 29th of *March*, 1604. Mr. Speaker related what he had delivered to the King, by Warrant from the Houſe the Day before, and his Majeſty's Anſwer.

He ſaid, he delivered, 1. The Manner and Matter. 2. Such Precedents as had been vouched and ſtood upon; and, 3. He opened the Law of Elections.

The Election duely made.

1. The Writ of Summons, dated the laſt of *January*, was duely iſſued. The Liberty was free, by that Writ, to chuſe *in pleno comitatu*. The Election was made, according to that Writ, and the Indenture duely returned; and therefore it was adjudged by the Houſe, that this firſt Election being good, the ſecond was conſequently void.

2. As to the Outlawry againſt Sir *Francis Goodwin*, there was one proſecuted againſt him, at the Suit of *Johnſon*, 31 *Eliz.* for 60 *l.* laid in the Huſtings, *London*. Another at the Suit of one *Hacker*, for 16 *l.* 39 *Eliz.* That Sir *Francis* had been ſince choſen, admitted, and ſerved as a Member of this Houſe, in ſeveral Parliaments holden, 39 & 43 *Eliz.* 1603-4. 1 Jac. I.

That the Outlawry remained in the Huſtings, ſo as the Law could take no Notice of it; neither was it pleadable.

Precedents of Outlaws ſerving in Parliament.

1 *Eliz.* One *Smith* was found outlawed, and privileged by the Houſe.

23 *Eliz.* One *Vaughan* outlawed, and on a Diviſion, voted to be privileged: Carried by ſix Voices.

Mr. *John Killegrew*, having fifty two Outlawries returned againſt him, was admitted to ſerve in the Houſe.

Sir *William Harecourt*, eighteen Times outlawed, was admitted to ſerve.

The Outlawry irregular.

The ſuppoſed Outlawry againſt Sir *Francis*, 31. *Eliz.* was no Outlawry at all; no Proclamations being made in the County where he dwelt.

General Pardons ſince.

The general Pardons of the 39 & 43 *Eliz.* were good in Outlawries againſt all; but the Parties, at whoſe Suit they were proſecuted.

The Sheriff no Judge of the Outlawry.

That the Sheriff was no Judge of the Outlawry, nor could take notice it was the ſame Man, and therefore could not properly return him out-lawed.

The King's Anſwer.

To which his Majeſty anſwered, He was indifferent which of the two was choſen: Nor had he any Deſign to impeach their Privilege; but, *ſince they derived all their Privileges from him, and by his Grant, he expected they ſhould not be turned againſt him:* That there was no Precedent ſuited this Caſe fully: Either they were in the Times of Minors, of Tyrants, of Women, or of ſimple Kings.

All their Privileges derived from the Crown.

That the Chancery ought to judge of Returns.

By Law, that Houſe ought not to meddle with Returns, being all made into *Chancery*; and ought to be corrected, or reformed, in that Court only, into which they were returned. And that it was the Opinion of all the Judges, that Matter of Outlawry was a ſufficient Cauſe of Diſmiſſion, of any Member out of the Houſe; and that Sir *Francis Goodwin* was outlawed, according to the Laws of the Land.

That Outlaws ought not to ſit in the Houſe.

The King orders them to debate the Matter again, confer with the Judges, &c.

It was, therefore, his Majeſty's ſpecial Charge, 1. That the Courſe already taken, ſhould be truly reported. 2. That they ſhould debate the Matter, and reſolve among themſelves. 3. That they ſhould admit of a Conference with the Judges; and, 4. That they ſhould make a Report of all their Proceedings to the Council.

The Commons diſpute theſe Points among themſelves.

In the Debate upon this Report it was ſaid, that now the Caſe of Sir *John Forteſcue*, and Sir *Francis Goodwin*, was become the Caſe of the whole Kingdom: That old Lawyers forget, and commonly interpret the Law, according to the Time.

That, by this Courſe, the free Election of the County was taken away; and none could be choſen, but ſuch as pleaſed the King and Council; and that they ought, therefore, with Fortitude, to maintain their Privilege; which could not be conſtrued a Contempt, but merely a Maintenance of their common Right, which their Anceſtors had left them: And it was juſt and fit they ſhould tranſfer them to Poſterity.

Reſolve to maintain their Privileges.

But offer his Majeſty further Reaſons.

At length, it was reſolved, to preſent his Majeſty, in Writing, with the Reaſons of their Reſolutions, in Sir *Francis Goodwin*'s Caſe, which were of the following Tenor.

To

1603-4. 1 Jac. I.

To the King's Moſt Excellent Majeſty, the humble Anſwer of the Commons Houſe of Parliament, to his Majeſty's Objections in Sir Francis Goodwin's *Caſe:*

1. AS to that Objection, that they aſſumed a Power of examining Elections and Returns, which belonged to the Court of *Chancery*,

They anſwer, that, until the 7th of *Hen.* IV. all Parliament Writs were returnable into the Parliament, and conſequently examinable there: But in that Year, a Statute was made, that thenceforth every Parliament Writ ſhould be returnable in *Chancery*, however the power of the Parliament to examine and determine Elections remained; for ſo the Statute had been always expounded ſince: And for that Purpoſe the Clerk of the Crown uſed to attend, all Parliament Time, upon the Commons Houſe with the Writs and Returns: And the Parliament always appointed Committees, for examining Controverſies, concerning Elections and Returns. During which Time, the Writs and Indentures remain with the Clerk of the Crown; and after the Parliament ended, and not before, are delivered to the Clerk of the Petty Bag in *Chancery*, to be kept there.

They ſhew the Commons always determined Returns.

As to Precedents: In the 29th of *Eliz.* after one Writ awarded into *Norfolk*, for Choice of Knights, and Election, made and returned, a ſecond was, before the Parliament Day, awarded by the Lord Chancellor, and thereupon another Election and Return made: And the Commons being attended, with both Writs and Returns, by the Clerk of the Crown, allowed the firſt, and rejected the ſecond. So in the 23d of *Eliz.* a Burgeſs was returned dead and a new one choſen, and returned by a new Writ. For the Party, that was returned dead, appearing, the Commons, nothwithſtanding the Sheriff's Return, admitted the firſt choſen, and rejected the ſecond. The ſame 23d Year, a Burgeſs, choſen for *Hull*, was returned Lunatick, and a new one choſen, upon a ſecond Writ: And the Commons, finding the Return of Lunacy to be true, refuſed the firſt: But if it had been falſe, they would have received him. In the 43 *Eliz.* the Sheriff of *Rutlandſhire* returned himſelf elected: The Commons, finding he was not eligible by Law, ſent a Warrant to the *Chancery*, to chuſe a new. The ſame 43d Year, a Burgeſs was choſen for two Boroughs. The Commons, after he had made his Election which he would ſerve for, ſent a Warrant to the *Chancery*, for a Writ to chuſe a-new for the other Borough: All which proves the *Chancery* to be a Place appointed to receive the Returns, and keep them for the Parliament; but not to judge of them. The Inconvenience would be great, if the *Chancery* might, upon Suggeſtions, or Sheriffs Returns, ſend Writs for new Elections, and theſe not ſubject to Examinations in Parliament; for ſo, when fit Men were choſen, the Lord Chancellor, or Sheriffs, might diſplace them, and ſend out new Writs, till ſome were choſen to their Liking.

Precedent of it.

The Court would chuſe the Houſe of Commons, if the Chancery, *or Sheriffs, were Judges of Returns.*

2. As to that Objection, that they had proceeded with too much Precipitation; and being but half a Body, and no Court of Record alone, they had refuſed a Conference with the Lords, the other half; they anſwered, that they debated this Caſe with as much Deliberation, as others, of the like Nature, uſed to be debated in Parliament, calling the Clerk of the Crown before them, and viewing both the Writs and Returns; and finding the latter Writ was awarded, and ſealed, before the *Chancery* was repoſſeſſed of the former, they held it clearly to be a Fault in Law, and proceeded to Sentence, with the leſs Regard to the latter Election: And as to their refuſing a Conference with the Lords, there was none deſired, till they had given their Judgment; and then it could not be revoked. However, they proceeded with all Diligence, to lay the Matter before his Majeſty: And though they were but part of a Body, as to the making of new Laws, yet, for any Matter of Privilege of their own Houſe, they were, and ever had been, a Court, of themſelves, of ſufficient power to diſcern and determine, without their Lordſhips, as their Lordſhips have uſed always to do for theirs without them.

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The laſt Writ null, the firſt not being returned at the Time of awarding the ſecond.

The Lords deſired no Conference, till the Thing was determined.

And had nothing to do with their Privileges.

3 As to the third Objection, that they had, by their Sentence of receiving *Goodwin*, admitted, that Outlaws might be Law-Makers, which was contrary to all Laws,

They anſwered, that notwithſtanding the Precedents they had exhibited, of Outlaws in perſonal Actions being admitted into the Houſe, they were ready to paſs an Act, for the excluding all Outlaws for the future: But that, indeed *Goodwin* was not legally outlawed, at the Time of his Election. For whereas the Party outlawed, ought to be five Times proclaimed, to appear in the Sheriff's County Court; and then, not appearing, ought to be adjudged outlawed by the Coroners of the County; there appeared no Record made in the Huſtings of *London*, that *Goodwin* was five Times proclaimed, or that the Coroners had given Judgment of Outlawry againſt him, at the Time of the Election: But a Clerk, lately come to that Office, had now, ſeveral Years after *Goodwin's* Election, made Entries, interlined in a new Hand, that he was outlawed: To which new Entries they could give no credit; becauſe the Parties, at whoſe ſuit *Goodwin* was ſued, had teſtified, by their Releaſe in Writing, that they never proceeded further, than to take out the Writ of Exigent, for an Outlawry; and being then paid their Money, deſiſted in their ſuit; ſo that *Goodwin* was not five Times proclaimed, or adjudged, outlawed: And it was uſual to ſpare that Proclamation, and Judgment, if the party called not for it. 2. The Writ of Exigent, by which the Sheriff was commanded to proclaim him five Times, was not legally returned, or certified, by *Certiorari*; without which, *Goodwin* could not be diſabled, as an Outlaw: And beſides, the two Parliament Pardons had cleared the Outlawry, if there had been any: And they could not but obſerve, the extraordinary Steps that had been taken, to make *Goodwin* an Outlaw, ſince his Election, *viz.* by procuring the Outlawry to be returned, in the Name of the Sheriffs, that ſerved ſeven Years before, and had been long dead, and now a Return made of the old Exigent; which could be for no other End, than

They ſhew the Outlawry to be irregular.

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than to disable him to sit in the House, the Party being long since satisfied his Debt.

These Reasons were delivered in Writing to a Committee of the House of Lords, by Sir *Francis Bacon*, and several Members of the Commons, appointed for that Purpose: And the Committee of the Commons, at the same Time, by the Order of their House, desired their Lordships, that since they had nearer Access to his Majesty, they would co-operate with them, for the King's Satisfaction.

The King's Reply.

These Reasons being communicated to his Majesty by the Lords, his Majesty sent for the Speaker of the Commons, and told him, he had received a Parchment from the House: Whether it were an absolute Resolution, or Reasons, to give him Satisfaction, he knew not; but protested, he had as great a Desire to maintain their Privileges, as ever Prince had, or they themselves. He had considered the Matter, and heard his Judges and Council, and was now distracted in Judgment. Therefore, for his further Satisfaction, he desired, and commanded, as *an absolute King*, that there might be a Conference between the House and the Judges; and that his Council might be present; not as Umpires to determine, but to report, indifferently, on both Sides.

He insists on a Conference with the Judges, before the Privy Council.

The Commons agree to it.

Whereupon, the Question being put, Whether to confer with the Judges, in the Presence of the King's Council? It was resolved in the Affirmative, and a select Committee appointed for the Conference: And it was further resolved upon the Motion of Mr. *Lawrence Hyde*, that the said Committee should insist upon the Fortification and explaining of the Reasons and Answers, delivered to his Majesty; and not proceed to any other Argument, or Answer, what Occasion soever moved in the time of the Debate.

The Conference reported.

On Wednesday, the 11th of *April*, Sir *Francis Bacon* was called upon by the House, to make a Report of the late Conference with the Judges, in the Presence of his Majesty, and the Lords of the Council: But he excused himself, saying, he was not warranted to make any Report: However, upon the Question being overruled, to make a Report, he said, the King declared, he would be President himself.

That this Attendance renewed the Remembrance of the last, when they departed with such Admiration. It was the Voice of God in Man; the good Spirit of God in the Mouth of Man. *I do not* (says Sir *Francis*) *say, the Voice of God, and not of Man. I am not one of* Herod's *Flatterers. A Curse fell upon him that said it: A Curse on him that suffered it. We might say, as was said to* Solomon, *We are glad, O King, that we give Account to you, because you discern what is spoken.* But he observed, THEY DID MORE NOW TO KING JAMES, THAN EVER WAS DONE SINCE THE CONQUEST, IN GIVING ACCOUNT OF THEIR JUDGMENTS.

Sir Francis Bacon's *Flights.*

This was spoken by Way of Preamble. How to report his Majesty's Speeches: He knew the Eloquence of a King was inimitable.

His Majesty said, the Cause of this Meeting was, to draw to an End the Difference in Sir *Francis Goodwin*'s Case: ---- If they required his Absence, he was ready; because he feared he might be thought interested, and so breed an Inequality on their Part: ---- He said, he would not hold his Prerogative, or Honour, or receive any Thing of his Subjects: ---- That he would confirm and ratify all just Privileges: ---- One Point was, whether they were a Court of Record, and had Power to judge of Returns. As their Court had Power, so had the Chancery: And the Court that first had passed their Judgment, should not be controlled. The Chancery was a Confidentiary Court to the Use of the Parliament, during the Time: ---- Whatever the Sheriff inserted beyond the Authority of his Mandate, was a Nugation. The Parliament of *England* were not bound by a Sheriff's Return: That their Privileges were not in Question. It was private Jealousies, without any Kernel or Substance. *He granted, It was a Court of Record, and a Judge of Returns:* And, in Conclusion, moved, that neither Sir *John Fortescue*, or Sir *Francis Goodwin*, might have Place: With which the Committee agreed.

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The King admits them a Court of Record, and Judges of Returns.

Moved for a new Election.

Upon this Report, it was said, that the Committee had Authority, only to fortify what was agreed on by the House; they had no Authority to consent.

But the general Voice of the House being, They had done their Duty, it was resolved, that Sir *John Fortescue*, and Sir *Francis Goodwin*, should both be secluded, and a Writ should issue for a new Choice; and a Warrant, from the Speaker, was directed accordingly, for a new Writ.

Which the Commons agree to.

But the Consent of Sir *Francis Goodwin*, for a new Election, was first signified to the Speaker, in Writing, before they would come to this Resolution.

A Committee was, afterwards, appointed, to return his Majesty Thanks, for his gracious Presence, and Direction, in Sir *Francis Goodwin*'s Case. To whom, his Majesty answered, That this Question was unhappily cast upon him: He carried as great a Respect to their Privileges as ever Prince did; their Privileges were his Strength. He thought the Ground of their Proceeding was, their not understanding, he had intermeddled before they decided: That, he thought also, they had no wilful Purpose to derogate any Thing from him; for their Answer was grave, dutiful, and obedient: But, as the Devil had unhappily cast that Question between them, so, he saw, God had turned it to two great Purposes; 1. That, he knew, and had approved, their Loyalty; and 2d. that he had so good an Occasion, to give a Testimony of his Bounty and Grace; and, as they came to give him Thanks, so he redoubled his Thanks to them: That he had rather be a King of his Subjects, than a King of many Kingdoms.

And return his Majesty Thanks.

The King gives them double Thanks.

The Warrant for the new Election, was of the following Tenor, *(viz.) Whereas the Right Honourable Sir* John Fortescue *Knight, Chancellor of his Majesty's Dutchy of* Lancaster, *and Sir* Francis Goodwin *Knight, have been severally elected, and returned, Knights of the Shire, for the County of* Bucks, *to serve in this present Parliament: Upon deliberate Consultation, and for some special Causes moving the Commons House of Parliament, It is this Day ordered, and required by the said House, That a Writ be forthwith awarded, for a new Election of another Knight*

The Warrant for a new Election.

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Knight of the ſaid Shire; and this ſhall be your Warrant.

Directed, To my very loving Friend, Sir *George Coppin* Knight, Clerk of the Crown, in his Majeſty's High Court of Chancery.

Remarks on Goodwin's Caſe.

King *James* appears to have been miſinformed, both as to the Circumſtances of the Caſe, and the Privilege of the Commons. He took it for granted, that Sir *Francis Goodwin* was legally outlawed; and, that the Chancery, in that Caſe, might iſſue a new Writ, for another Election: But, upon the Commons ſhewing him, that the Outlawry was irregular, and that the Houſe were Judges of the Returns of their own Members, he ſeems to have given up both thoſe Points: And, as the Commons would admit of no Conference with the Houſe of Peers, on this Head, after they had given their Judgment, we ſee them repreſenting to his Majeſty, that this was the firſt Time, that they ever condeſcended to give a Reaſon of their Judgment to the Crown.

As to their Precedents of Outlaws actually ſitting in the Houſe; I believe, it will be admitted, that no Precedents, how numerous ſoever, could juſtify ſuch a Practice, either in Law or Reaſon: That a Man, who has loſt all the Benefits of the Law, and of an *Engliſh* Subject, ſhould commence a Lawgiver, and have the Diſpoſal of other Men's Lives, and Fortunes: This ſeems very abſurd; and the Commons were ſo ſenſible of it, that they offered to bring in a Bill, for excluding all Outlaws for the future: But I do not perceive, this would have mended the Matter much, if they would ſuffer No-body to judge who was an Outlaw, but themſelves. By the ſame Rule, that the Sheriff cannot avoid returning a Candidate regularly outlawed, one would think, he could not refuſe returning one, convicted of Treaſon, and Rebellion; or, if he pretended to apprehend ſuch a one, after his Election, he might, be called to an Account, perhaps for invading the Privileges of the Houſe; which, alone, can determine, according to this Opinion, the Qualifications of the Perſons elected.

But, in ſome Caſes, it is evident, that the Sheriff is made Judge of the Qualifications of the Electors, as well as the Elected, even by Act of Parliament; particularly, by the 7th and 8th of *Will.* III. c. 7. it is enacted, That if any Return-Officer, ſhall return a Member, to ſerve in Parliament, for any County or Place, contrary to the laſt Determination of the Houſe of Commons of the Right of Election in ſuch County or Place, ſuch Return, ſhall be adjudged a Falſe Return. Here the Sheriff is made Judge of what was the laſt Determination of the Commons, and, conſequently, of the Return; and, it would be very hard, if he was not; becauſe he forfeits an hundred Pounds, for making a Falſe Return, by a preceding Act: Indeed, the Commons, by their unlimited Privileges, may exclude the Perſon the Sheriff has returned; but he ſhall ſit, and vote in the Houſe, till ſuch Excluſion.

By 6 *Annæ*, c. 7. alſo the Candidate for a County, is obliged to make Oath, at the Election, that he is poſſeſſed of a clear Eſtate of 600 *l. per Annum*; which, if he refuſes to do, there is little doubt to be made, but the Sheriff may lawfully refuſe the returning of him; and, conſequently, he is, in this Caſe, Judge of his Qualifications (whatever the Houſe may determine afterwards;) and, poſſibly, would be liable to the Penalty of 100 *l.* for making a Falſe Return, if he ſhould return a Candidate that refuſed to take the ſaid Oath; and, if he may refuſe to return a Perſon, evidently diſqualified to ſit in the Houſe, in one Inſtance, why not in another? If he may judge, whether a Perſon is convicted of Treaſon, and Rebellion, why may he not take Cognizance that a Perſon is outlawed? they are both Matters of Record. Indeed, in this Caſe, the Outlawry was not recorded, and, therefore, could be no Bar to the Election; but where it is, and the Sheriff duly appriſed of it, ſurely, the Houſe could never cenſure him, for refuſing to return ſuch an Outlaw; or ſuffer ſuch an one, to ſit, and vote, in the Houſe. All the Queſtion is, If the Commons ſhould inſiſt on Outlaws being Members of their Houſe, whether the Crown, and the Houſe of Peers, may not juſtly refuſe the paſſing any Bills, till they ſhould be excluded? It ſeems to have been the Opinion, both of the King and Lords, at that Time, that they had a Right to demand a Reaſon, why the Commons admitted an Outlaw into their Body? And had the Party been regularly outlawed, poſſibly few People, at this Day, will think them much in the Wrong; for, by the ſame Rule one Outlaw is admitted into the Houſe, a Majority of Outlaws may be admitted; and it would be very hard upon the Kingdom in general, as well as upon the Crown, and the Houſe of Peers, if the Lives and Fortunes of the Subjects, ſhould lie at the Mercy of outlawed Men: To ſay, we may depend upon it, the Commons would never admit ſuch Members, is no Anſwer; for, do we not ſee this very Houſe of Commons, inſiſt upon their Right of admitting Outlaws, and producing numerous Precedents of Outlaws ſitting in their Houſe? and, particularly, of one *Killegrew*, who had two and fifty Outlawries returned againſt him, and yet was admitted to ſerve in the Houſe; and of Sir *William Harecourt*, that was outlawed eighteen Terms, and yet admitted to ſerve.

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We cannot wonder, after ſuch a Juſtification, that both the Crown, and the Houſe of Peers, were a little alarmed, and deſired a Conference on this Subject: Some, indeed, have charged the King, with exerting an arbitrary, and abſolute Power, on this Occaſion; becauſe he ſaid, *He deſired, and commanded, as an abſolute King, there might be a Conference, between the Houſe and the Judges, on this Subject, before the Privy-Council.* And, it muſt be acknowledged, that the Words, *An Abſolute King*, have a very ill Sound in *England*; but, if it be conſidered, that they were ſpoken *ex tempore*, and attended with ſuch qualifying Sentences, before and after, that the King could never mean, he thought himſelf veſted with a deſpotic and incontrollable Power, to which, all their Lives, and Privileges muſt ſubmit, as ſome People would interpret them, there will appear nothing very ſhocking in them: For, in the firſt Place, he proteſts, he had as great a Deſire to maintain their Privileges, as ever Prince had; and only re-

1604. 3 Jac. I.

quired there might be a Conference, for his Satisfaction; declaring, that his Council ſhould not be preſent, as Umpires, to determine, but to report the Matter, indifferently, on both Sides. This is not the Language of one, who looks upon himſelf to be poſſeſſed of abſolute Power; and, all that can in reality be made of it, is no more than if he had ſaid, *I am informed, that you have admitted an Outlaw into your Body; and, as I am your King, I require a Conference, between you and the Judges, that I may be informed, whether the Party be really outlawed, or not; and, if he be, whether, according to the Laws of* England, *ſuch an one can ſit in the Legiſlature.* This, ſurely, he might reaſonably require, *as King of* England: There was no Manner of Neceſſity of his uſing the Word *Abſolute*; nay, the Word was very improper, when he declared, he would be governed by the Laws, and the Privileges of the Houſe, in the Matter. The moſt that can be ſaid, is, that it was an improper, and unguarded, Expreſſion; it could never be meant in a bad Senſe, becauſe the whole Tenor of his Diſcourſe looked another Way: It could not be an unreaſonable Thing, in a King of *England*, eſpecially as he came from a foreign Kingdom, and could not be ſuppoſed perfectly acquainted with our Laws, to deſire to hear the Legality of the Matter debated between the Commons and the Judges: This, ſurely, he might have done, without reſorting to an *abſolute*, and unlimited Power.

1604. 3 Jac. I.

And laſtly, It may be obſerved, that his Majeſty was ſo far from exerting an abſolute Power upon the Occaſion, that he compromiſed the Matter with the Commons, and both Sides agreed to a new Election: His Actions, therefore, were very far from being arbitrary, however his Words might be interpreted. And it is obſervable, how very cautious the Commons were, that they might not appear to be biaſſed, or influenced, by the King, or any other, in their Determination; for, in their Warrant for a new Election, they do not ſo much as mention, that his Majeſty, or the Houſe of Peers, had interpoſed: They only ſay, That *for ſome ſpecial Cauſes moving the Commons Houſe, they award a Writ for a new Election.* They make it entirely their own Act; and the King was ſo far from exerciſing an *abſolute* Power, to *compel* them to this, that he, nor any Body, but their own Houſe, appear in the Warrant to have any Hand in it.

1605. 3 Jac. I.

The Trial of the Conſpirators in the Powder-Plot.

The Arraignment of ROBERT WINTER, JOHN GRANT, THOMAS BATES, THOMAS WINTER, AMBROSE ROOKWOOD, ROBERT KEYES, GUY FAWKES, and Sir EVERARD DIGBY, for *High Treaſon*, before the Earl of *Nottingham*, the Lord Chief Juſtice *Popham*, and other Commiſſioners of *Oyer* and *Terminer*, the 27th of *January*, 1605. 3 *Jac.* I.

1605. 3 Jac. I.

The Charge.

THE Indictment charges the Priſoners, with compaſſing, and imagining, the Death of the King, Queen, *&c.* and the Subverſion of the eſtabliſhed Religion and Government; and, particularly, with conſulting and agreeing, to blow up, and tear in Pieces, the King and Queen, Prince *Henry*, the Lords Spiritual and Temporal, and the Judges, and Commons aſſembled in Parliament: And that, they did not only conſpire, and conclude, to deſtroy the King's Iſſue Male, but to ſurprize his Daughters, the two Princeſſes, *Elizabeth* and *Mary*, and to proclaim the ſaid *Elizabeth* Queen: And that they took their Oaths, and received the Sacrament to conceal the ſaid Treaſons, and never deſiſt, till they had accompliſhed the ſame: That they, afterwards, dug a Mine in the Foundation of the Walls of the Parliament-Houſe, being three Yards thick; and, being diſcouraged by the Difficulty of that Work, they hired a Cellar, under the Parliament Houſe, in which they placed twenty Barrels of Gun-Powder; and, fearing the ſaid Powder was become damp, brought in ten Barrels and four Hogſheads, more, of Gun-Powder; covering the Whole with Iron Bars, Stones, Billets, and Faggots: And that, the ſaid *Guy Fawkes* had procured Touchwood and Match, and was prepared to ſet Fire to the ſame, at the Time prefixed: That the ſaid Traitors had alſo provided Horſes, Armour, Ammunition, and other Implements of War; and publiſhed divers falſe Reports, as if the Papiſts were to have been maſſacred; whereby divers Papiſts were incited to appear in Arms, and were in open and actual Rebellion, againſt the King, in ſeveral Parts of *England*.

Their Confeſſion.

To which Indictment, the Priſoners, ſeverally, pleaded, *Not guilty:* But their Examinations, wherein they had confeſſed theſe Treaſons, being ſhewn them, they acknowledged the ſame to be true in Court; and, thereupon, without any further Trial, their Confeſſions were recorded.

Sir Everard Digby *pleads Guilty.*

Sir *Everard Digby* alſo was arraigned for the ſame Treaſons, and pleaded GUILTY: Whereupon Judgment of High-Treaſon was pronounced on Sir *Everard Digby*, *Robert Winter*, *John Grant*, *Thomas Bates*, *Thomas Winter*, *Ambroſe Rookwood*, *Robert Keys*, and *Guy Fawkes*; and the four firſt were executed at the Weſt-End of St. *Paul's*; and the reſt in the *Old Palace-Yard*, *Weſtminſter*.

Judgment pronounced.

They are executed.

The

The Trial of HENRY GARNET.

1606. 3 Jac. I.

Garnet, *Superior of the Jeſuits tried.*

HENRY *GARNET*, Superior of the Jeſuits, was arraigned, for the ſame Treaſons, the 28th of *March*, 1606. 3 *Jac.* I.

Evidence againſt him.

The firſt Evidence, produced againſt him, was his own Confeſſion: Then two Witneſſes were examined againſt him, *Viva Voce*, (viz.) *Lokerſon*, and *Fauſet*; who depoſed, they heard *Garnet* ſay, *They will charge me with my Prayer, for the good Succeſs of the great Action in the Beginning of the Parliament; but I will tell them, that I meant it in Reſpect of ſome ſharper Laws, which, I feared, they would then make againſt Catholicks.*

Confeſſes the Treaſon.

Garnet ſaid, he was, indeed, acquainted with a Negotiation, in *Spain*, for Money to be beſtowed on poor Catholicks; but ever diſliked the Moving for an Army to be ſent hither: That he was alſo acquainted with the late Plot; but it was by Way of Confeſſion, which he was obliged not to diſcover: And, that he had actually written to *Rome*, to procure a Countermand of all Conſpiracies, and, he could never ſleep quietly, after he was acquainted with it.

To which, it was replied, That Meſſage to *Rome* was ſent ſo late, that the Blow muſt have been given, before the Meſſenger could have returned: And that, in his Confeſſion, he had ſaid, he offered Sacrifice to God, for Stay of that Plot, *Unleſs it were for the Good of the Catholick Cauſe*; and in no other Manner was the State obliged to him for his Maſſes and Oblations. And the Attorney-General obſerved, That the Priſoner did not come to the Knowledge of the Powdor-Plot, by Confeſſion; but that he was conſulted upon it: And, though he had concealed the Perſons, he ought to have diſcovered the Miſchief intended, for the Preſervation of the State: That he was, indeed, the Author, and Procurer of theſe Treaſons, as appeared by his own Confeſſions, and by his reſolving *Catesby*, concerning the Lawfullneſs and Merit, of them; as alſo, by his praying for their Succeſs.

He is convicted.

The Jury, being withdrawn a quarter of an Hour, returned with a Verdict that the Priſoner was GUILTY; and Sentence of Death paſſed on him as a Traitor.

Garnet was executed, at the Weſt-End of St. *Paul*'s, the 3d of *May:* When he acknowleged his Offence; begged Pardon; and exhorted the Papiſts, never to make the like Attempt; for God, he ſaid, would never proſper ſuch Treaſons againſt the King and State. *And executed.*

There were no more put to Death, in a judicial Way, for this Plot: *Catesby*, *Percy*, and ſome others, indeed, were killed, in defending themſelves againſt the Troops that were ſent to apprehend them in the Country, whether they had fled. And the Lords, *Mordaunt* and *Sturton*, being ſuſpected of their having ſome Knowledge of the Plot, by not appearing at this Parliament, were fined; *Mordaunt* ten thouſand Pounds, and the other ſix thouſand, by the Star-Chamber. And the Duke of *Northumberland*, Captain of the Band of Penſioners, was fined forty thouſand Pounds, and condemned to loſe all his Places, and to be impriſoned during the King's Pleaſure, for admitting his Couſin *Percy*, one of the Conſpirators, a Gentleman of that Band, without tendring him the Oath of Supremacy, though he knew him to be a Popiſh Recuſant: And an Act paſſed in this Parliament, for ſolemnizing the 5th of *November* (the Day appointed for the blowing up the Parliament) annually, as a Thankſgiving. *Some killed.* *Lords fined.*

There is very little Room for Remarks on theſe Proceedings; ſince all the Priſoners confeſſed themſelves guilty of High-Treaſon, and ſcarce made any Defence. *Remarks on the Powder-Plot.*

As to the fining the Lords in the Star-Chamber, on a bare Suſpicion of their Knowledge of the Plot, without any Manner of Evidence againſt them, This ſeems to be a Stretch of Power; and, it may be ſaid, of this Judgment, as in the late Biſhop of *Rocheſter*'s Caſe, it was either too mild, or too ſevere: If there was ſufficient Proof of High Treaſon againſt them, they ought to have ſuffered as Traitors; and, if there was no legal Proof, they ought to have been acquitted; for the Crime was Treaſon, or nothing.

The Trial of GEORGE SPROT, Notary of *Aymouth* in *Scotland*, for *High Treaſon*, 12 *Aug.* 1608. 6 *Jac.* I.

1608. 6 Jac. I.

Sprot's *Trial.*

The Charge.

THE Indictment charged, That whereas *John*, late Earl of *Gowrie*, had in *July*, 1600. treaſonably conſpired to murder his Majeſty, and imparted his deviliſh Purpoſe to *Robart Logane*, of *Reſtalrig*, who undertook to be an Accomplice in the ſaid Treaſon; the ſame coming to the Knowledge of the Panel, (or Priſoner) he treaſonably concealed the ſame.

The Priſoner confeſſes it.

Why this is called a Trial, I cannot conceive; It had been more properly ſtiled an Arraignment, and Confeſſion: For the Priſoner confeſſing the Indictment, both at the Examination, and in open Court, was thereupon condemned to be hanged and executed; in Purſuance of his Sentence: Which may be looked upon, as a Confirmation of the Truth of *Gowrie*'s Conſpiracy; and might be the principal Inducement for binding it up with the ſecond Collection of Trials. *Is condemned, and executed.*

1609. 7 Jac. I.

The Trial of ROBERT LOGAN.

1609. 7 Jac. I.

Logan's pretended Trial, after he was dead.

THE Trial of *Robert Logan* of *Reſtalrig*, for High Treaſon, in conſpiring with *John* Earl of *Gowrie*, to murder King *James* I. *June*, 1609. 1. *Jac.* I.

This, which is called the Trial of *Robert Logan*, is nothing more than a Summons, for him, or his Heirs, to appear in Parliament after he was dead; and, on their not appearing, Judgment given for the forfeiting their Eſtates and Honours, as in Caſes of High-Treaſon.

The Evidence.

The Evidence againſt *Logan* conſiſted of five Letters, written by him to Earl *Gowrie*, containing ſome dark Expreſſions concerning a Plot; and his Hand was proved by the Depoſitions of ſeveral Witneſſes: But the principal Evidence of *Logan*'s being concerned in Earl *Gowrie*'s Conſpiracy, was the Confeſſion of the aforeſaid *George Sprot*, both at his Arraignment and Execution.

Remarks on theſe Pieces.

All the Remarks I ſhall make on theſe Proceedings, are, that they ſeem to be inſerted, to prove the Reality of the Conſpiracy of *Gowrie*'s, which was ſufficiently evident before: That there is nothing in them that can denominate them Trials; and that there has been a great Expence of Paper and Print, to very little Purpoſe.

1609. 7 Jac. I.

The Trial of JOHN Lord *Balmerino*, for *High-Treaſon*, in Scotland, the 10th of *March*, 1609. 7 *Jac.* I.

1609. 7 Jac. I.

Balmerino's Trial. An Arraignment only.

THIS alſo, which is denominated a Trial, by the Editor, is no more than an Arraignment and Confeſſion.

The Charge.

The Indictment (of which there are but very ſhort Minutes) ſeems to have charged the Priſoner with High-Treaſon, in correſponding with the Pope, in the King's Name, and againſt his particular Directions; and charges him alſo, with Negotiations with foreign States, Enemies to the Goſpel, in order to ſubvert the eſtabliſhed Religion.

Confeſſed.

The Lord *Balmerino*, being arraigned, confeſſed his Offence in writing a Letter clandeſtinely to the Pope, and acknowledged it would admit of no Excuſe; adding, that his Majeſty knew nothing of the Letter: That the King had declared againſt having any Correſpondence with the Pope; but that he, the Priſoner, thinking it might be for his Majeſty's Intereſt, to have a good Underſtanding with the Court of *Rome*, had ſurreptitiouſly procured his Majeſty's Hand, to a Letter to his Holineſs, among other Papers, he brought him to ſign: But ſaid, he (the Priſoner) had no View to the Alteration of Religion, or procuring a Toleration for Catholicks, or to his own private Advantage.

The King's Letter to the Lord Advocate.

His Majeſty's Letter to the Lord Advocate alſo was read; wherein he declared, he refuſed to liſten to the Priſoner's Motion, of writing to the Pope.

The Priſoner convicted, but pardoned.

Whereupon the Priſoner was convicted; but Execution ſuſpended, till his Majeſty's Pleaſure was known.

And his Eſtate reſtored.

He was detained, for ſome Time, a cloſe Priſoner: Afterwards he was a Priſoner at large; and at length the King reſtored him, both to his Honour, and Eſtate.

Remarks on this Proceeding.

Biſhop *Burnet*, who could never afford King *James* a good Word, tells us, That his Majeſty, obſerving the Popiſh Intereſt was conſiderable in *England*, and might poſſibly obſtruct his aſcending that Throne, endeavoured to gain the *Engliſh* Papiſts, by aſſuring them, he would connive at the Exerciſe of their Religion; and that he actually wrote that Letter to the Pope, with which the Lord *Balmerino*, his Secretary, was charged: But that, it being afterwards publiſhed by Cardinal *Bellarmine*, upon his Majeſty's putting the Laws in Execution againſt the *Engliſh* Papiſts, the King, to alloy the Jealouſies the Kirk of *Scotland* had entertained, of his favouring Popery, cauſed the Lord *Balmerino* to be tried and condemned for it. Thus the Biſhop inſinuates, that it was all a State Trick: That this Lord was aſſured of his Pardon, before he made his Confeſſion; and conſented to abuſe the World, by undergoing a mock Trial.

In anſwer to which, it may be obſerved, There is no other Proof, of this Contrivance between the King and the Lord *Balmerino*, than the Suggeſtions of Biſhop *Burnet*: To balance which, we have not only the Lord *Balmerino*'s Confeſſion, both before and after his Arraignment; wherein he declares, the King had no Knowledge of the Letter; and the King's own Letter, expreſly denying that he was aquainted with the Contents of it: But it appears, that the Lord *Balmerino* was ſo far from having any real Affection for King *James*, after his Arraignment, that, though his Majeſty granted him his Pardon, and reſtored him to his Honour and Eſtate, neither he, nor his Family, could ever forgive the Proſecution. His Son and Heir was remarkable for his Malice and Antipathy to his Succeſſor. We actually find him the Subject of another Trial, for High Treaſon, in libelling his Adminiſtration.

The

1612. 10 Jac. I.

The Arraignment of ROBERT CREIGHTON Esq; (Baron of *Sanquire*, in *Scotland*) for *Murder*, at the *King's-Bench* Bar, the 27th of *June*, 1612. 10 *Jac.* I.

1612. 10 Jac. I.

Lord Sanquire's *Arraignment.*

The Charge.

THE Indictment charged him, as Acceſſary, before the Fact, to the Murder of *John Turner*, Fencing-Maſter.

The Caſe.

The Caſe was this: *Robert Creighton*, Baron of *Sanquire* or *Sanchar*, in *Scotland*, playing at Foils with *John Turner*, (about five Years before the Murder) *Turner* thruſt out one of the Baron's Eyes, with his Foil: Whereupon the Baron, reſolving to be revenged, tampered with ſeveral Aſſaſſins, to murder *Turner:* But he had not an Opportunity of effecting it, till the preſent Year, 1612. when he prevailed on *Gilbert Gray*, one of his Servants, and *Robert Carliel* a Dependant, both *Scotſmen*, to undertake it: But *Gray* afterwards declining the Attempt, *Robert Carliel* aſſociated himſelf with one *James Irweng*, another *Scotſman*; and theſe two, on the 11th of *May*, 1612, about 7 in the Evening, went to a publick Houſe in the *Friars*, which *Turner* uſed to frequent, as he came from his School; and finding *Turner* there, they ſaluted him, and fell into Diſcourſe with him; when *Carliel*, on a ſudden, fired a Piſtol at *Turner*, and ſhot him in the Breaſt; and he immediately dropped down dead, ſaying only, *Lord have Mercy upon me, I am killed:* After which, *Carliel* fled to *Scotland*. The Lord *Sanquire* abſconded; *Irweng* and *Gray* were taken, endeavouring to make their Eſcapes; and *Gray* was afterwads made an Evidence againſt the reſt. At length, the Lord *Sanquire* ſurrendering himſelf, and *Carliel*, the principal Aſſaſſin, being brought back from *Scotland*, *Carliel*, and *Irweng* were tried at the *Old-Bailey*, *London*; and being convicted of the Murder, were executed in *Fleet-ſtreet*, near the *Friars*; and the Lord *Sanquire* being afterwards arraigned at the *King's-Bench* Bar, as Acceſſary before the Fact, confeſſed the Indictment; and was thereupon condemned, and executed in *Palace-Yard*, when he profeſſed himſelf a *Roman* Catholick.

The Principals convicted and executed.

Lord Sanquire *convicted and executed as Acceſſary.*

Some Points of Law reſolved, before his Arraignment.

Before the Arraignment of Lord *Sanquire*, ſeveral Points of Law were reſolved by the Judges, particularly, that the Acceſſary could not be tried till the Principals were attainted; That a Peer of *Scotland* could have no Advantage of his Peerage here, but muſt be tried as an *Engliſh* Commoner. That the Indictment of the Acceſſary ought to be in the County of *Middleſex*, where he incited the Murderers to commit the Fact; and that the Indictment ought to recite, That the Principals committed the Murder in *London*, as the Truth was. That the *King's-Bench* was the proper Court to try the Acceſſary in, as it ſat in the County of *Middleſex*, and was ſuperior to all other Courts of *Oyer* and *Terminer* which could not ſit in Term-Time, while that Court ſat: And that there need not be fifteen Days for the Return of the *Venire facias*, becauſe the Offence was committed in *Middleſex*, where the Court ſat; but, if the Indictment had been found in another County, and removed thither, there ought to have been fifteen Days between the *Teſte* and the Return. That if the Principal was erroneouſly attainted, either for Error in the Proceſs, or becauſe the Principal, being out of the Realm, was outlawed, *&c.* yet the Acceſſary might be attainted; but then, on the Reverſal of the Attainder of the Principal for Error, the Attainder of the Acceſſary was reverſed of Courſe.

1613. 11 Jac. I.

Proceedings in the *Divorce* between the Lady FRANCES HOWARD and ROBERT Earl of *Eſſex*, before *George* Lord Archbiſhop of *Canterbury*, *John* Lord Biſhop of *London*, and other Commiſſioners, 1613. 11 *Jac* I.

1613. 11 Jac. I.

The Divorce of the Earl of Eſſex *from his Counteſs.*

The Allegations of the Lady, to obtain a Divorce.

THE Lady *Frances*, Wife of *Robert* Earl of *Eſſex*, under Pretence of her Husband's Impotency, exhibited Allegations againſt him, of the following Tenour, *viz.* That ſhe, being about thirteen Years of Age, was married to *Robert* Earl of *Eſſex*, in *January*, 1603. That the ſaid *Robert* was then about fourteen Years of Age, and now about twenty-three; and had, during all that Time, been in good Health; no way hindered, by Ague or Sickneſs but he might have performed the Duties of the Marriage Bed.

That, ſince the ſaid pretended Marriage, at leaſt by the Space of three Years, ſince the ſaid *Robert* attained the Age of eighteen; as Time and Place ſerved, after the Faſhion of other married Folks, ſhe, the ſaid *Frances Howard*, in Hopes of lawful Iſſue, and deſirous to be made a Mother, lived with the ſaid *Robert* at Bed and Board, and they both lay naked in the ſame Bed, as married Folks uſe; and from Time to Time, again and again, ſhe yeilded herſelf to his Power, and, as much as lay in her, offered herſelf and her Body to be known; and earneſtly deſired his Embraces: That the ſaid Earl very often, again and again, tried to lie with her, as his lawful Wife; which ſhe refuſed not, but uſed the beſt Means ſhe could: Notwithſtanding which, the ſaid Earl never could know her, or enjoy her, as the Marriage-Bed alloweth; though, both before and after the ſaid Time, he hath known other Women, and ſuggeſts that he was hindered by a perpetual and natural Impediment from knowing her, the Lady *Frances*, and could never enjoy her.

That the ſaid Lady *Frances* was, and ſtill is, fit for conjugal Embraces, and able to enjoy any Man; and is ſenſible of no Impediment in herſelf, and yet remains a Virgin; and was, at the Time of the pretended Marriage, unacquainted with the Earl's want of Ability, and Impediment, already mentioned.

That the ſaid Earl had very often declared, that, although he had done is beſt Endeavour, he never could once enjoy the ſaid Lady *Fran-*

1613. 11 Jac. I.

ces. And, laſtly, That ſhe had never publiſhed his Infirmity, if ſhe had not been forced to it by falſe Rumours of her Diſobedience to the Earl: And deſires, that, ſince this pretended Marriage was but of Fact, and not of Right, it might be adjudged as none; and ſhe might be releaſed from all Knots and Bonds of the ſame, by the Sentence of the Court.

The Earl's Anſwer to the Allegations.

In anſwer to this, the Earl acknowledged, That he was about the Age in the Allegations mentioned, nor had he had above two or three Months Sickneſs ſince his Marriage. That one Year, ſince he was Eighteen, he attempted divers Times to enjoy her: That the two following Years, when he was willing, ſhe ſhewed herſelf at ſometimes willing, but at others refuſed: That he lay in Bed moſt commonly with her, and felt no Motions or Provocations; and that he could never penetrate, or enjoy her; though he found no Defect in himſelf, and both before and after the Marriage, was capable of enjoying any other Woman. As to perpetual and natural Impediments, he knew not what they meant; but he had lain, the two laſt Years, by the Lady *Frances*, and had no Motion to know her, and believed he never ſhould; for he thought the Lady *Frances* was not fit for conjugal Embraces; and admits it to be true, that he had ſaid, *He often endeavoured to enjoy her, but that he had not, nor could not.*

A Jury of Matrons, inſpect the Lady.

The Archbiſhop, and the reſt of the reverend Judges, obſerving from the Allegations, that both the Earl and the Counteſs were very deſirous to be divorced, ordered a Jury of Matrons to be impanelled, to inſpect the Counteſs, and ſee if ſhe was ſtill a Virgin, as was pretended on both Sides; and whether ſhe was capable of performing the Duties of the Marriage-Bed. Whereupon ſhe was ſearched, and the Jury found that the Lady was fit for matrimonial Embraces, and capable of bearing Children; but that ſhe was ſtill a Virgin. And three Ladies, that attended the Jury, alſo depoſed, that they were preſent when the Jury made the Inſpection; and, that they gave good Reaſons for the Judgment they made.

Declares herſelf a Virgin, but fit for conjugal Embraces.

The Archbiſhop's Reaſons againſt the Divorce.

However, the Archbiſhop was ſtill diſſatisfied; and obſerved, that there were no good Precedents for divorcing Man and Wife, for an Impotency, or impediment, towards a particular Woman, when the Man was capable of enjoying others: But the King, who was zealous for the Divorce, urged, that there did not want Precedents of it: To which his Grace replied, that there was none, till the Pope aſſumed a Liberty of departing from the Primitive Rules; and inſiſted, that ſome Reaſon ought to be given, for this partial Impotency, or Impediment, that was pretended: With which, when the King was preſſed, and not able to aſſign any Cauſe for it, he ſuggeſted, that the Man might be bewitched: However, ſuch was the Royal Influence, that a Majority of the Commiſſioners were for a Divorce; and the Parties were accordingly ſeperated; the Bond of Matrimony diſſolved; and it was declared lawful for either of them to marry elſewhere.

The King argues for it.

Suggeſts the Earl was bewitched.

Sentence of Divorce.

Commiſſioners for the Divorce.

The Biſhops, who were for the Divorce, were *Wincheſter*, *Ely*, *Rocheſter*, *Litchfield* and *Coventry*; and the Doctors, Sir *Julius Cæſar*, Sir *Thomas Parry*, and Sir *Daniel Donne*.

Commiſſioners againſt it.

The Commiſſioners, who diſſented, were the Archbiſhop of *Canterbury*, and the Biſhop of *London*; and the Doctors, Sir *John Bennet*, *Francis James*, and *Thomas Edwards*.

Remarks on the Divorce of the Earl of Eſſex from his Counteſs.

Both the King and the Delegates, it is ſaid, were egregiouſly impoſed upon in this Proceeding, by the Arts of the Lady *Frances* and her Gallant, the Lord *Rocheſter:* They had conſulted one *Foreman*, a pretended Phyſician, and a Dealer in the *Black-Art*, it is ſaid, who furniſhed them with Drugs, to render the Earl of *Eſſex* impotent, which was the Reaſon of his lying ſo quietly by the Counteſs the two laſt Years: They procured Sir *Thomas Overbury* to be murdered, becauſe he ſhould not defeat the Intrigue between them, or divulge their Secrets. And, when the Counteſs was to be inſpected, under Pretence of an extraordinary Modeſty, ſhe obtained Leave to be covered with a Veil, by which Means ſhe introduced a young Virgin in her Room, and deceived the Jury of Matrons, and the Court: But their Practices will be more amply diſcovered, in the ſucceeding Trials, for the Murder of Sir *Thomas Overbury*.

The King being able to give no other Reaſon for this partial Impotency towards a particular Woman, than the Earl's being bewitched, occaſioned ſome merry Reflections, when the Artifices, to prevent the Conſummation of the Lady *Eſſex*'s Marriage, were diſcovered: and ſuch pretended Impediments have been laughed at ever ſince: But, however foul theſe Practices might appear afterwards, Things had not, certainly, ſo ill an Aſpect at the Time of the Divorce; for we find, immediately after, *Rocheſter* and the Lady ſolemnized their Marriage; he was made Earl of *Somerſet*; and not only the Court, but the City of *London*, congratulated them on the Occaſion; and they were ſplendidly entertained, by the Lord Mayor and Aldermen, in the City.

1615. 13 Jac. I.

The Trial of RICHARD WESTON, for the *Murder* of Sir *Thomas Overbury*, before the Lord Mayor, the Lord Chief Juſtice, and other Commiſſioners of *Oyer* and *Terminer*, the 19th of *October*, 1615. 13 *Jac.* I.

Weſton's Trial, for Overbury's Murder.

The Charge.

THE Indictment charges, That the ſaid *Richard Weſton*, contriving, not only to bring upon the Body of Sir *Thomas Overbury* great Sickneſs and Diſeaſes, but to deprive him of his Life, did, in the *Tower* of *London*, procure a certain Poiſon, mingle it in Broth, and give it the ſaid Sir *Thomas* to eat: That he mingled Poiſon alſo in Tarts and Jellies, and gave him; and, that the Priſoner, with an Apothecary, his Confederate,

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Confederate, then unknown, mixed Poiſon alſo in a Clyſter, and adminiſtered it to the ſaid Sir *Thomas*; whereupon he fell into Diſeaſes and Diſtempers; and upon the 15th Day of *September*, 1613. died, being ſo poiſoned and murdered by the ſaid *Richard Weſton*.

The Priſoner ſtands mute.

The Priſoner, being practiſed upon by a certain *Great Man*, ſtood mute, and refuſed to plead the firſt Day; but being threatened with the Puniſhment, called *Peine fort & dure*, that is, to be preſſed to Death, and brought to his Trial again, the 23d of *November*, he thought fit to plead *Not guilty*.

Pleads, Not guilty.

Whereupon the Lord Chief Juſtice informed the Jury, that, though the Poiſons mentioned in the Indictment, were Roſalgar, White Arſenick, and Mercury Sublimate, yet, they were not to expect preciſe Proof of the ſeveral Kinds of Poiſon: So, where a Man was indicted for murdering another with a Dagger, it was not material what the Weapon was, ſo as the Jury found the Murder.

Not neceſſary to find the Circumſtance laid in the Indictment.

The Evidence.

Then the Proofs were produced: And firſt, the Examination of *Lawrence Davis*, Servant to Sir *Thomas Overbury*, was read, who depoſed, That his Maſter was a very healthful Man, and had no Sores, or Bliſters, on his Body, before his Impriſonment: That Sir *Thomas* would have undertaken his Embaſſy, but the Earl of *Somerſet* diſſuaded him from it, and promiſed to bear him out; and, that Sir *Thomas* complained, he had not been a Priſoner, but for *Somerſet*; and, if he died, his Blood would be required at his Hands; and, that *Somerſet* told this Deponent at *New-Market*, *He would be even with Sir* Thomas. He further depoſed, That his Maſter wrote *Somerſet* a Letter, telling him, he would never conſent to his marrying the Lady *Eſſex*: That *Somerſet* ſent *Overbury* a Letter in the *Tower*, with a Powder in it, and perſuaded him to eat it; bidding him not fear, if it made him ſick; for that would be a Means of procuring his Enlargement.

Henry Payton, another Servant of *Overbury*'s, confirmed the Teſtimony of the former; and depoſed, that his Maſter and *Somerſet*, had a Quarrel in the Gallery at *White-Hall*, about that Lord's keeping Company with the Counteſs.

Sir *Dudly Diggs* depoſed, that Sir *Thomas* was perſuaded by *Somerſet*, to withdraw himſelf from Court, and depended on his Protection.

The Priſoners Examination read.

Then the Priſoner's Examination was read, wherein he declared, That before *Somerſet*'s Marriage, or the Impriſonment of *Sir Thomas*, he carried ſeveral Letters between *Somerſet* and the Counteſs: That they met thereupon at a Farmer's Houſe in the Country; and, at Night in Town, at Mrs. *Turner*'s in *Paternoſter-row*. He depoſed alſo, that he ſhewed the Phial, the Counteſs ſent him in the *Tower*, to the Lieutenant, who perſuaded him not to give it *Sir Thomas*: But that he did however give it him; as alſo ſeveral Tarts, and other Things, that were poiſoned, together with the poiſoned Clyſter, by the Direction of the Counteſs, and Mrs. *Turner*, who promiſed him a Reward; and that the Clyſter gave *Overbury* ſixty Stools and a Vomit: That the Counteſs ſent him, by Mrs. *Turner*, an hundred and eighty Pounds, at two Payments: And, that he was preferred to the Keeping Sir *Thomas Overbury*, in the *Tower*, by the Counteſs and Mrs. *Turner*'s Means, who prevailed on Sir *Thomas Monſon*, to uſe his Intereſt with the Lieutenant to give him that Place.

1615. 13 Jac. I.

Sir *Thomas Monſon* alſo depoſed, that he recommended the Priſoner to the Lieutenant of the *Tower*, to be Sir *Thomas Overbury*'s Keeper, at the Requeſt of the Counteſs.

The Examination of Sir *Jervis Elvis*, Governor of the *Tower*, alſo was read, who confeſſed the Priſoner was recommended to him by Sir *Thomas Monſon*; who gave him Direction alſo, that he ſhould not ſuffer any Letter, Tokens, or other Things, to be delivered to *Overbury*. He alſo confeſſed, he was Privy to the ſending the Poiſon to *Weſton*, for *Overbury* to take; but ſaid, he diſſuaded him from adminiſtring them.

Simon Marſon, a Muſician, depoſed, that he was Servant to Sir *Thomas Monſon*; and that he received Tarts and Jellies from the Counteſs of *Eſſex*, and carried them to Sir *Thomas Overbury*, in the *Tower*.

Paul de la Belle depoſed, That he ſaw *Overbury*'s Body, after he was dead; and that it was full of Bliſters, and ſo conſumed as he had never ſeen the like.

George Rawlins, a Kinſman of *Overbury*'s, depoſed, that he came often to the *Tower* to ſee him; but was not ſuffered to ſee him even at the Window; and *Weſton* ſaid, that was the Order of the Council, and of the Lieutenant.

Sir *David Wood* depoſed, that the Lady *Eſſex* offered him a thouſand Pounds, and her Protection, if he would murder Sir *Thomas Overbury*.

The Priſoner makes ſcarce any Defence. He is convicted, and condemned.

The Priſoner denied the whole Charge upon his Trial, though he had confeſſed it before, but, being able to alledge very little to prove himſelf innocent, the Jury found him GUILTY of poiſoning and murdering Sir *Thomas Overbury*; and he was thereupon condemned and executed.

1615. 13 Jac. I.

The Trial of ANNE TURNER, Widow, at the King's Bench, for the *Murder* of Sir *Thomas Overbury*, the 7th of *Nov.* 1615. 13 *Jac.* I.

1615. 13 Jac. I.

Anne Turner's Trial, for Overbury's Murder. The Charge.

THE Indictment charged her, as Acceſſary before the Fact, and with aiding and aſſiſting the aforeſaid *Richard Weſton*, to poiſon Sir *Thomas Overbury*.

The Evidence.

And a Letter from the Counteſs of *Eſſex*, to Mrs, *Turner*, was read in Evidence; wherein the Counteſs tells *Turner*, her Husband complained he had not lain with her; and, that her Father, her Mother, and Brother, told her, ſhe muſt obey him, and were very

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very angry with her; but ſhe had rather die a thouſand Times, for then ſhe ſhould loſe the other's (*Somerſet*'s) Love; deſires *Turner*, therefore, to do what ſhe could for her, and ſhe ſhould have as much Money as ſhe could deſire.

A Letter from the Counteſs, to *Foreman* the Quack and Conjurer, alſo was read, wherein ſhe bids him remember the Galls; for ſhe ſaid, ſhe was afraid, though all Things remained well as yet; deſired he would ſend her ſome good Fortune, and keep the Lord ſtill true to her; and wiſhed, if ſhe was ungrateful, all Miſchief might befall her: Told him, her Lord was luſty, and drank with his Men; and all the Content he gave her, was to abuſe her, and to uſe her doggedly, as formerly; and ſaid, ſhe ſhould never be happy in this World, becauſe he hindered her Good; and begged, for God's Sake, *Foreman* would get her from that vile Place: Subſcribing herſelf his affectionate Daughter, *Frances Eſſex*.

Then ſeveral Pictures, and Paper Charms, were produced in Court, which were found in the Cuſtody of Mrs. *Turner*; at which Time, the Scaffolding in the Hall giving a Crack, the People were in a great Conſternation, believing the Devil was coming for them. 1615. 13 Jac. I.

Mrs. *Foreman*, the Doctor's Widow, alſo brought into Court ſeveral Pictures and Charms, that were uſed to provoke the Lord *Somerſet* to love the Counteſs; and in ſome Scraps of Parchment, ſome Devils were invoked by Name, to torment the Lord *Somerſet* and Sir *Arthur Manwaring*, if they proved falſe to the Counteſs, and Mrs. *Turner*.

Turner, the Priſoner, alſo confeſſed, that they had applied to Dr. *Savory*, another Conjurer, after *Foreman*'s Death; and had practiſed ſeveral Sorceries againſt the Earl of *Eſſex*'s Perſon.

Then the ſame Examinations were read, againſt the Priſoner, as were read in the former Trial of *Weſton*; whereby ſhe appeared to be the Counteſs of *Eſſex*'s Agent, in conveying the Poiſons to *Weſton* for Sir *Thomas Overbury*: And, ſaying very little in her Defence, the Jury found her GUILTY of the Murder; and, Sentence being pronounced upon her, ſhe was executed a few Days afterwards. *She making ſcarce any Defence, is convicted, and executed.*

The Trial of Sir JERVIS ELVIS, for the *Murder* of Sir *Thomas Overbury*, the 16th of *Nov.* 1615. 13 *Jac.* I.

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Elvis *tried for* Overbury's *Murder. The Charge.*

THE Indictment charges him Acceſſary, before the Fact, to the ſaid Murder; and with abetting, aiding, and aſſiſting, *Weſton* in it.

The Evidence.

The ſame Evidence was given, of his being Privy to the ſending the Poiſons to *Weſton*, as in *Weſton*'s Trial. Three Letters, from the Earl of *Northampton* to *Somerſet*, alſo were read; in the firſt of which, *Northampton* tells *Somerſet*, that he had ſpent two Hours, the Day before, in prompting the Lieutenant with Cautions, and Conſiderations, how to act his Part in the Adventure: In the ſecond, he tells him of the Care the Lieutenant took of his Charge; and, in the third, that *Overbury*'s Body being viewed, there were found twelve Tumours on his Belly, ready to break: That the Corpſe was a diſmal Spectacle, and ſtunk ſo intolerably, that they were forced to caſt it into a Coffin, with a looſe Sheet over it; and concluded, that God was gracious in cutting off all the Inſtruments of the factious Crew.

A Letter, from Sir *Jervis Elvis* to the Earl of *Northampton*, alſo was read, wherein he undertakes to keep Sir *Thomas Overbury* according to his Inſtructions; ſays, he adviſed Sir *Thomas* to give way to the Match between *Somerſet*, (then *Rocheſter*) and the Counteſs; and, that Sir *Thomas* grew warm againſt the Lord *Northampton* and the Counteſs of *Suffolk*, telling him, if he were the Counteſs of *Suffolk*'s Priſoner, as he thought he was, the Lieutenant might let her know, that he cared as little to die, as ſhe did to be cruel; adding, *Of* Rocheſter's *Part I ſhall greatly fear, until I ſee the Event.*

Franklin's *Examination read.*

Then the Examination of *James Franklin*, the Apothecary, was read, who depoſed, that Mrs. *Turner* came to him from the Counteſs of *Eſſex*, and deſired him to get the ſtrongeſt Poiſons he could for *Overbury*; and, he thereupon, bought ſeven Sorts, and ſent them to *Overbury* at ſeveral Times; and, that the Lieutenant knew of them, as appeared by ſeveral Letters he wrote to the Counteſs, which this Deponent had ſeen; in one of which was this Expreſſion; *Madam the Scab is like the Fox; the more he is curſed, the better he fareth:* And further, that *Overbury* ſcarce ever eat any Thing, but there was Poiſon mixed with it; and for theſe Poiſons the Counteſs ſent him Rewards: That ſhe ſtill ſent for more Poiſons; and the Deponent beſought her, on his Knees, not to uſe him any more in this Matter; but ſhe would not deſiſt; and ſaid ſhe would poiſon him, becauſe he would pry into her Suit: Concluding, that the Day the Counteſs was married, ſhe ſent the Deponent twenty Pounds by Mrs. *Turner*; and he was to have had two hundred Pounds *per Annum*, for Life.

The Priſoner's Defence.

To this Charge, and Evidence, Sir *Jervis* made a very poor Defence: He acknowledged indeed, he ſuſpected, there was a Deſign to poiſon his Priſoner, *Overbury*; but that he was no ways Acceſſary to it, or aiding and aſſiſting in it; and thereupon, put the following Caſe to the Judges: *If one knows not of a Plot to poiſon another, but only ſuſpects it, and is no Actor, or Contriver, Whether ſuch an one be Acceſſary to the Murder?* If the Court thought ſuch a concealing, without Malice, was an Abetting, then he would acknowledge himſelf Guilty: But the Court thought his Guilt too manifeſt, to favour him with a Reſolution of this Caſe; and obſerved, that *Franklin*'s Confeſſion left him without Excuſe: The Jury being withdrawn, ſoon after returned with a Verdict, that the Priſoner was Guilty? whereupon Sentence of Death paſſed upon him; and he was hanged at *Tower-Hill*, to deter future Governors of that Fortreſs from conſenting to ſuch Practices againſt the King's Priſoners. *He puts a Caſe of Law to the Judges.*

The

The Trial of JAMES FRANKLIN, the Apothecary, for the *Murder* of Sir *Thomas Overbury*, the 27th of *Nov.* 1615. 13 *Jac.* I.

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1615. 13 Jac. I.

Franklin's Trial for the Murder of Overbury.

The Charge.

THE Indictment charges the Priſoner, as Acceſſary, before the Fact, to the Murder of Sir *Thomas Overbury*, by preparing ſeveral Sorts of Poiſon, for him to take.

The Evidence.

The Evidence againſt the Priſoner was his own Examination and Confeſſion, which differs, in ſome Particulars, from his Examination that was read againſt Sir *Jervis Elvis*; and, probably, was taken at another Time.

His own Confeſſion.

In this Confeſſion the Priſoner ſays, that Mrs. *Turner* deſired him, to provide a Poiſon that would not kill a Man preſently, but lie in his Body a certain Time, wherewith he might languiſh, by little and little; and, that ſhe gave him four Angels, with which he bought *Aqua fortis*; and ſhe tried it upon a Cat, that languiſhed, and cried pitifully, two Days, and then died: Then Mrs. *Turner* brought him to the Counteſs, who told him, *Aqua fortis* was too ſtrong, and propoſed Arſenick, which the Priſoner ſaid was too violent; Then ſhe propoſed Powder of Diamonds, which, he ſaid, he did not know the Nature of: And ſhe anſwered, he was a Fool; and, giving him ſome Gold, bid him buy that Powder for her; and, enquiring, why ſhe would poiſon Sir *Thomas*, ſhe ſaid, he would pry ſo far into their Concerns, that he would undoe them all: That, a little before *Overbury*'s Death, the Counteſs ſent for him, and ſhewed him a Letter from the Lord *Rocheſter (Somerſet)* wherein he read theſe Words, *I marvel at theſe Delays, that the Buſineſs is not yet diſpatched:* By which the Deponent believed, he meant the poiſoning of *Overbury:* And that the ſaid *Rocheſter* ſaid, in another Letter, Sir *Thomas* was to come out of the *Tower* within two Days, and they ſhould be all undone: And, thereupon, the Counteſs ſent for *Weſton*, and was very angry with him, that he had not diſpatched Sir *Thomas:* And *Weſton* anſwered, he had given him a Thing, that would have killed twenty Men.

That, about a Fortnight after *Weſton* was taken up, the Counteſs ſent for the Deponent, and told him, *Weſton* had confeſſed, and they ſhould all be hanged; adding, *On your Life, do not confeſs, you brought me, or Mrs.* Turner, *any Poiſon; for, if you do, you ſhall be hanged; I will not hang for you.*

That *Weſton* came to his (the Deponent *Franklin*'s) Houſe, and told him, now the Counteſs's Turn was ſerved, ſhe uſed him unkindly; and that two Perſons were employed to poiſon them both.

The Priſoner acknowedged in Court, that he did buy the Poiſons mentioned in his Confeſſion; but proteſted, at his Trial, that he was ignorant what they intended to do with them: Which the Jury not regarding, found him Guilty; and he was condemned, and executed.

Franklin convicted, and executed.

The Arraignment of FRANCES Counteſs of *Somerſet*, for the *Murder* of Sir *Thomas Overbury*, before her Peers, the 24th of *May*, 1616. 14 *Jac.* I.

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The Counteſs of Somerſet's Arraignment, for Overbury's Murder.

The Charge.

THE Indictment being read, in which ſhe was charged, as Acceſſary, before the Fact, to the poiſoning and murdering Sir *Thomas Overbury*, a Certificate was produced, ſigned by the Judges of the King's Bench, to prove that *Weſton* had been convicted, as Principal, for the ſaid Murder.

Proof that the Principal was convicted.

She pleads guilty.

To which Indictment the Priſoner pleaded GUILTY. However, Sir *Francis Bacon*, the Attorney-General, thought fit to give an Account how the Murder was diſcovered, and what had been done upon it. He ſaid, *Overbury* died by Poiſon, in the *Tower* of *London*, the 15th *September*, 1613. and immediately, upon his Death, there was a Rumour, that he came ſtrangely by his End. On the contrary, there was another Report, that he died of a very foul Diſeaſe: And although it was above two Years ſince he was murdered, God had ſo infatuated the two great Procurers, and their Inſtruments, that the former took no Care about it, and the others fled not: That the Diſcovery of the Murder was in a Manner miraculous, and came out in a Compliment: The Lord *Shrewsbury* recommending Sir *Jervis Elvis* to a Miniſter of State, whom Sir *Jervis* deſired to be made known to, that Miniſter anſwered, he took it as a Favour from his Lordſhip; but added, there lay an heavy Imputation on Sir *Jervis*, about *Overbury*'s Death, and wiſhed he would clear himſelf in that Point; which the Lord *Shrewsbury* reporting to Sir *Jervis*, he appeared in ſome Conſternation, and ſaid, ſome Attempts, indeed, had been made againſt Sir *Thomas Overbury*, but they came to nothing, having been checked by him.

How the Diſcovery was made.

The King being acquainted with what *Elvis* ſaid, ordered him to write down what he knew of it, which he did; but took care to be very favourable in what related to himſelf: And the Matter being referred to a Committee of Council, *Weſton* was ſent for, who made a further Diſcovery; and the Offenders were ordered to be proſecuted: Whereupon, no Practiſes were left untried, to ſtifle the Truth. *Weſton* was prevailed on to ſtand mute, for ſome Time; but at length, a full Diſcovery was made, and the under Actors in this Tragedy having been convicted and executed, this Lady, one of the Authors and Contrivers of it, was brought to Trial, and convicted alſo, by her own Confeſſion: He deſired therefore, her Confeſſion might be recorded, and Judgment given againſt her.

She deſires the Intercceſſion of the Lords.

And it being thereupon demanded of the Counteſs, what ſhe had to ſay, why Judgment

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of Death ſhould not be pronounced, ſhe anſwered, *She could ſay much to aggravate, but nothing to extenuate, her Fault*; only deſired the Lords would intercede for her to the King, for Mercy: Whereupon the Lord High Steward paſſed Sentence on the Priſoner, but ſaid, ſince the Lords had obſerved, with what Humility and Grief ſhe had confeſſed the Fact, he did not doubt but they would become Mediators for her to the King.

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Sentence pronounced.

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The Trial of ROBERT CARR, Earl of *Somerſet*, for the *Murder* of Sir *Thomas Overbury*, before the Peers appointed to try him, the 25th of *May*, 1616. 14 *Jac.* I.

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The Earl of Somerſet's *Trial for* Overbury's *Murder. The Charge.*

THE Indictment charges him as Acceſſary, before the Fact, to the poiſoning and murdering Sir *Thomas Overbury*; to which he pleaded NOT GUILTY.

Sufficient, to prove the Subſtance of the Indictment.

Mr. Serjeant *Montague* opened the Indictment, and obſerved, that the only Thing to be enquired of was, whether the Lord *Somerſet* had procured, or cauſed, the poiſoning Sir *Thomas Overbury*; the Form and Circumſtances mentioned in the Indictment were not to be regarded; to which the Lord High Steward, Sir *Edward Coke*, and the reſt of the Judges, aſſented.

Sir Francis Bacon *opens the Evidence.*

Then the Attorney-General, Sir *Francis Bacon*, ſaid, That the King had given them in command, not to expatiate or make Invectives, but materially to purſue the Evidence, as it conduced to the determining the Point in queſtion; and this they ſhould have done of themſelves, if they had not had ſo good a Warrant; for far be it from us (ſays he) by any Strains of Wit, or Art, to ſeek to play Prizes or blazon our Names in Blood; but obſerved, however, that next to High-Treaſon, the Offence the Priſoner ſtood charged with, was the greateſt and fouleſt Felony; it was Murder by Poiſon; Murder committed on the King's Priſoner; and Murder under a Colour of Friendſhip: That what rendered the Crime of poiſoning ſo deteſtable was, that a Man was taken off in full Peace, thinking no Harm, and while he was comforting and refreſhing Nature with his Food; and was the more to be dreaded, becauſe it was ſo eaſily committed, and ſo hard to be prevented or diſcovered; other Murders were committed *cum ſonitu*. There were ſome Acts that might diſcover or trace the Offenders; but this came upon a Man, when he thought himſelf in perfect Security, and every Day he was within the Gates of Death: Nor did it concern only the Man againſt whom the Malice was intended, but it was often prepared for one, and taken by another; as in the Reign of *Henry* VIII. where the Intent was to poiſon one; and the Poiſon being put into the Broth, ſixteen of the Biſhop of *Rocheſter*'s Servants were poiſoned; and it went even to the Alm's-Basket, and the Poor at the Gate were poiſoned with it; which occaſioned a Statute, that made Poiſoning High-Treaſon; for it tended to diſſolve human Society; and whatever Offence did ſo, was of the Nature of High-Treaſon; and obſerved, that Sir *Thomas* was the firſt Man that had been murdered in the *Tower*, except the two young Princes, who were deſtroyed by *Richard* III.

Shews the Heinouſneſs of the Crime.

He ſhews, that the Source of all this Miſchief was, unlawful Love, between the Earl of *Somerſet* and the Counteſs of *Eſſex*, which *Overbury* oppoſing, they both determined to deſtroy him: Not that *Overbury* oppoſed it out of any Scruple of Conſcience, (for there was a Time, when he boaſted he had won him the Love of this very Lady, by his Letters and Induſtry) but out of Hatred to the Family of the *Howards:* And this had drawn the Earl of *Northampton* into the Plot againſt him, who knowing *Overbury*'s Malice to himſelf, and his Houſe, thought it neceſſary he ſhould be removed, and cut off; and thus it was certainly reſolved and decreed amongſt them, that *Overbury* muſt die.

Unlawful Love the Source of this Miſchief.

Then the Witneſſes were produced, and firſt *Henry Payton*, a Servant of Sir *Thomas Overbury*'s, who depoſed, that he heard high Words between the Earl of *Somerſet* and his Maſter, concerning the Earl's viſiting the Counteſs in the Gallery of *Whitehall*, as he had depoſed, in the Trial of *Weſton*. He depoſed further, that he ſaw a Letter from his Maſter to the Priſoner, the Lord *Somerſet*, wherein were theſe Words: *If I die, my Blood be upon you*; and in that, or another, *My Lord, you are now as good as your Word, you have kept your Vow to me:* That when his Maſter was in the *Tower*, *Weſton* ordered the Deponent, to tell the Lord *Somerſet*, that the Powder, his Lordſhip had ſent Sir *Thomas*, had given him ſixty Stools, beſides Vomits; and that when he delivered the Meſſage to Lord *Somerſet*, he cried, Piſh, and turned away.

The Evidence.

Two Letters from Sir *Thomas Overbury*, to the Earl of *Somerſet*, alſo were read in Evidence, in one of which he ſays, 'Is this the 'Fruit of my Care and Love to you? Are theſe 'the Fruits of common Secrets, common Dan- 'gers? You cannot ſuffer me to lie in this Mi- 'ſery. All I entreat of you is, to free me from 'this Place, and that we may part Friends. 'Drive me not to Extremities, leſt I ſhould 'ſay ſomething that you and I both repent.'

Two Letters from Overbury *to* Somerſet.

In the other Letter he ſays, 'You told my 'Brother *Lidcote*, that my irreverent Stile made 'you neglect me. With what Face could you 'do this, when you know you owe me all the 'Fortune, Wit, and Underſtanding, that you 'have? You ſacrifice me to your Woman, ſtill 'holding Friendſhip with them that brought 'me hither. You bad my Brother *Lidcote* keep 'my Deſire of Liberty ſecret: But this ſhall 'not ſerve your Turn; you and I, ere long, 'will come to a Trial of another Nature. I am 'upon the Rack, and you are at Eaſe, and yet 'I muſt ſay nothing! When I heard, notwith- 'ſtanding my Miſery, you went to your Wo- 'man, curled your Hair, preferred *Gibbe* to the 'Bed-Chamber; and, in the mean time, ſend

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'me nineteen Projects, how I ſhould caſt about for my Liberty; give me a long Account of the Pains you have taken, and then go out of Town, while I have neither Friend, or Servant, ſuffered to come at me. Well, I have written the Story betwixt you and me, how I have loſt my Friends, for your Sake; what Hazards I have run; what Secrets have paſſed between us; how, when you had won that Woman by my Letters, you concealed all After-Proceedings from me, which occaſioned thoſe Breaches between us; of the Vow you made to be even with me, and ſending for me twice that Day I was caught in the Trap; perſuaded me it was a Plot of my Enemies, to ſend me beyond Sea; and urged me not to accept it (the Embaſſy) aſſuring me you would free me from any long Trouble. On Friday I ſent this Narrative to a Friend, under eight Seals; and, if you perſiſt to uſe me thus, aſſure yourſelf, it ſhall be publiſhed. Whether I live or die, your Shame ſhall never die, but remain to the World's End, to make you the moſt odious Man living.

Then *Simcock*'s Examination was read, who depoſed, that when Sir *Thomas* was in the *Tower*, *Weſton* often told him, the Lord *Somerſet* ordered him to look well to *Overbury*; for, if he came out, one of them muſt die.

Another Examination of *L. Davis* alſo was read, who depoſed, that ſeveral ſealed Packets, directed to the King, were given to Sir *Thomas* by the Lord *Somerſet*; and that Sir *Thomas* opened them, took ſhort Notes out of them, and then ſealed them up, and returned them to the Lord *Somerſet* again.

Overbury's *Father's Evidence.*

The Depoſitions of *Franklin*, and the reſt of the Witneſſes, alſo were read, which were given in Evidence at the former Trials; and Mr. *Overbury*, Father of Sir *Thomas*, depoſed, that, hearing his Son was very ſick in the *Tower*, he petitioned the King, that ſome Phyſicians might have Acceſs to him; and the King ſaid, his own Phyſician ſhould go to him: Whereupon he addreſſed himſelf to the Lord *Somerſet*, who ſaid his Son ſhould be ſpeedily delivered; but bad him prefer no more Petitions. However, not finding any Steps taken towards releaſing him, he preferred another Petition, and the King ſaid, he ſhould have an immediate Anſwer; and the Lord *Somerſet* told him, he ſhould ſuddenly be relieved: but adviſed, that neither the Petitioner, or his Wife, ſhould preſs to ſee him, becauſe it might protract his Delivery; nor deliver any more Petitions to the King, for that might ſtir up his Enemies againſt him.

Somerſet's *Letter to Mrs.* Overbury.

The following Letter from the Lord *Somerſet*, to Mrs. *Overbury*, alſo was read, *viz.*

'Your ſtay in Town can avail nothing towards your Son's Delivery. I would adviſe you to retire into the Country; and doubt not, before your coming home, you will hear he is a free Man.'

Another to Mr. Overbury.

Then a Letter that the Lord *Somerſet* wrote to Mr. *Overbury*, after his Son's Death, was read, wherein he ſays,

'Your Son's Love to me got him the Malice of many; and they caſt thoſe Knots on his Fortune, that coſt him his Life; ſo, in a kind, there is none guilty of his Death but I; and you cannot have more Cauſe to commiſerate the Death of a Son, than I of a Friend: But, though he be dead, you ſhall find me as ready as ever I was, to do all the Courteſies, that poſſibly I can, to you and your Wife, or your Children. In the mean Time, I deſire Pardon from you, and your Wife, for your loſt Son, though I eſteem my Loſs the greater: And for his Brother, that is in *France*, I deſire his Return, that he may ſucceed his Brother in my Love.'

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Several Examinations were read, ſhewing, that *Overbury* was detained, and kept cloſe Priſoner, by *Somerſet*'s Order, though he was committed only for Contempt, and the great Apprehenſions he and his Lady were under, leſt *Overbury* ſhould get out: But ſome of theſe Examinations were not upon Oath.

Depoſitions not upon Oath.

The Letters concerning the Lord *Northampton*'s Practices with Sir *Jervis Elvis* alſo were read, in one of which he tells *Somerſet*, the Lieutenant had undertaken, that either *Overbury* ſhould do him good Offices with the Lord *Suffolk*, or elſe he ſhould never recover, which he thought the moſt ſure and happy Change: Which Letters the Priſoner acknowledged he had received.

Then Proof was made of *Somerſet*'s ſending *Overbury* Arſenick in a Letter; and the ſending the poiſoned Tarts and Jellies, as in the other Trials; and *Franklin*'s Depoſition was read, wherein he ſays, he was ſent for by the Lady *Somerſet*, and made to take an Oath of Secrecy, in Order to ſuppreſs the Diſcovery.

And Sir *Robert Cotton* depoſed, that a little before the laſt *Michaelmas*, *Somerſet* gave him a Draught of the largeſt Pardon that had been granted, wherein, among other Offences, both Murder and Treaſon were pardoned; by which he was ordered to draw one for the Priſoner.

The Earl of Somerſet's *Defence.*

The Earl of *Somerſet*, in his Defence, ſaid, that the Powder he ſent *Overbury*, was to make him ſick, that he might have the better Handle to ſpeak to the King for him; and that it was at *Overbury*'s Deſire, he ſent it: That though he had conſented to his Impriſonment, that was only to prevent his being an Impediment to his Marriage; and he had, however, given Orders he ſhould have the moſt airy Lodgings, and might ſpeak with whom he would. That, though Breach of Friendſhip had been urged as an Aggravation againſt him, it was no wonder for Friends to fall out; and he thought *Overbury* never had a Friend to whom he had not given Offence.

He confeſſed there had been a Communication of Secrets between them; and, knowing *Overbury*'s Abilities, he had employed him to take Abſtracts out of Ambaſſador's Letters, and that by the King's Order. That he was ſo far from diſſuading *Overbury* not to undertake the Embaſſy, that he would gladly have had him gone, that he might have been out of the way at that Time, as well on Account of his Marriage, as *Overbury*'s Inſolence, and therefore could not be ſuppoſed to have prevented his going. That as to the poiſoned Tarts, his Wife had confeſſed the ſending them; but thoſe the Priſoner ſent ought to be preſumed wholeſome, till it was proved otherwiſe.

That

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That the Lord *Northampton*'s Letters proved no more, then that the Lieutenant would endeavour to make *Overbury* a good Inſtrument between him and *Suffolk*; and though *Elvis*, in his Letter, ſays, *Death is the beſt way*, the Anſwer to thoſe Letters, would juſtify him, if he had them to produce. He had endeavoured, indeed, to get a Pardon, as he might have been guilty of ſome Overſights, in the Beginning of his Adminiſtration, when he was unacquainted with Affairs of State: but the general Words in it were put in, by the Lawyers, without his Privity: And then, having recommended his Caſe to the Conſideration of his Peers, he withdrew; but, it ſeems, they were unanimous in their Opinion, that the Priſoner was GUILTY; and he was adjudged to be hanged. Whereupon, he deſired the Interceſſion of the Lord High Steward, and the reſt of the Peers, to his Majeſty, for Mercy; and they interceded ſo effectually, both in Behalf of the Earl, and the Counteſs, that they obtained their Pardon, with this Limitation, that they ſhould remain impriſoned, during his Majeſty's Pleaſure.

He is convicted.

The Earl and Counteſs pardoned as to their Lives.

Remain Priſoners in the Tower *till the Year* 1622.

Both of them having continued Priſoners in the Tower (the Scene of their Villany) till the 18th of *January*, 1622, they obtained an Order of Council, for their Releaſe from thence: But the Earl and the Counteſs, were required, to repair, either to *Grays*, or *Cowſham*, the Lord *Wallingford*'s Houſes, in the County of *Oxon*, and remain confined in one of the ſaid Houſes, and within three Miles Compaſs of either of them, until further Orders from his Majeſty; and, it appears, that the King permitted the Earl to enjoy the greateſt Part of his Eſtate, notwithſtanding his Attainder.

Afterwards confined in Oxfordſhire.

Remarks on the Trials of Overbury's *Murderers.*

It is obſervable, in theſe Trials, that the Court reſolved, it was not neceſſary to find the Circumſtances laid in the Indictment, ſo as the Subſtance, namely, the poiſoning, was found.

We find Examinations ſtill read againſt the Priſoners here, as in former Trials: It was not, yet, cuſtomary, to produce the Witneſſes, to give their Evidence, *viva voce*; though this was ſometimes done: But, it was ſtill more irregular, and, indeed, illegal, to read the Examinations of Perſons convicted, and even executed, for the ſame Crime; and ſeveral of them not upon Oath. It is true, there was abundant Evidence, beſides, of the Priſoners Guilt; but this would not juſtify the bringing Evidence againſt them that was not legal: But Courts of Juſtice did what they pleaſed with Priſoners, in thoſe Days, as is manifeſt by theſe and the former Trials.

Sir *Francis Bacon* very rightly obſerved, in theſe Trials, That all this Miſchief proceeded from an unlawful Amour, in which, perhaps, the Parties, at firſt, thought there was very little hurt. Had they foreſeen that Train of Evils that ſucceeded; that Injuſtice, Treachery, and Ingratitude; the barbarous Murder they muſt commit, to conceal the firſt Crime; the many Perſons there would be a Neceſſity of drawing into the ſame Guilt; the Lives that muſt be loſt, and the eternal Infamy that muſt ſucceed, they would, ſurely, never have engaged in ſuch an Attempt: Which ought for ever to caution others, how they deviate from the Paths of Virtue: We are, inſenſibly, led from one Step to another, till we find ourſelves involved in Crimes, which we could not at firſt have reflected on without Horror.

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And thus we ſee, how Changes are frequently brought about, unexpectedly, in Courts and Kingdoms: One is diſgraced, another preferred, and the whole World ſometimes, put in Confuſion, by a little Piece of Gallantry, as ſome term it: And a Miſtreſs ſhall put a Prime Miniſter upon perpetrating the vileſt Actions, to gratify her Revenge, or Luſt. I queſtion whether there is to be met with in Hiſtory, a Man more univerſally deteſted, than *Somerſet*, who, to enjoy a faithleſs laſcivious Woman, ſacrificed his Friend, and made him undergo the moſt cruel Tortures; and after he had killed him, endeavoured to murder his Memory, by giving out, he died of an infamous Diſtemper. This may ſerve alſo, as a Specimen of the Friendſhips among the Great; and ſhews us, at the ſame Time, how dreadful a Thing it is to fall into the Hands of a Prime Miniſter. Here we ſee one inciting his Friend to Offend his Prince, and then, putting his Prince upon puniſhing him a thouſand Times more than the Offence could ever deſerve; or, rather he makes uſe of his Sovereign's Name, to rack and torture his Friend to Death: And, how eaſy is it for a Miniſter, at this Day, thus to exerciſe his Malice againſt any Man he does not like? Let him charge the Party, firſt, with ſome notorious Crime; and this gives him a Colour to impriſon him in a Dungeon, to load him with Irons, exclude all his Friends from him, and murder him, almoſt, with repeated Hardſhips, and the Noiſomneſs of the Place; and this before a Man appears guilty of any Crime whatever: which ſeems a very great Defect in the Laws of a Country, which are ſaid to be ſo well adapted to the Preſervation of Liberty and Property.

Every Man is ſuppoſed to be innocent, and ought to be dealt with as ſuch, till he is convicted. But here a Man often ſuffers more before he is brought to his Trial, than he can do for the Offence afterwards, if he appears guilty of it: And this, perhaps, to make him an Evidence againſt a Perſon, ſome Great Man has a Mind to deſtroy: Priſons may be made as ſtrong, and ſecure, as can be deſired, but, why People ſhould be tortured, and their Friends debarred from ſeeing, and relieving them, till it appears they are guilty, is not eaſy to conceive. This, ſurely, can be with no other View, than to gratify the Malice of his Enemies; or, to make ſuch unfortunate People Tools, to ſerve the Turn of an abandoned Miniſtry.

How King *James* came to ſpare the Principal Actors in this Tragedy, and execute only their under Agents, is very unaccountable, and muſt be allowed to reflect no ſmall Diſhonour on his Memory: It would not only have been the moſt juſt, but the moſt popular thing he could have done, to have left theſe great, but infamous Offenders, to the Puniſhment their Crimes deſerved.

The

1615. 13 Jac. I.

The Trial of JOHN OGILVIE Jeſuit, for *High-Treaſon*, at *Glaſcow* in *Scotland*, the 28th of *February*, 1615. 13 *Jac.* I.

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Ogilvie's Trial.

The Charge.

THE Indictment recites, That whereas God, the Author of all righteous Government, had eſtabliſhed Kings and Magiſtrates, his Lieutenants upon Earth; and had particularly bleſſed that Country with a more ancient, juſt, and permanent Deſcent of lawful Kings, than any other Nation in the World, and extended their Felicity beyond the Happineſs of their Anceſtors, by the Juſtice, Wiſdom, and Clemency, of his Majeſty's proſperous Reign, honouring, and ſtrengthening him, with the Acceſſion of the moſt mighty and flouriſhing Kingdoms of *England*, *France*, and *Ireland*: Which viſible Favours, proceeding directly from God's bountiful Hand, moved the whole Eſtates of that Kingdom, in the Parliament aſſembled at *Perth*, the 9th of *July*, 1606. to acknowledge his Majeſty's Sovereign Authority, Royal Prerogative, Power, and Privilege, of his Crown, over all Eſtates, Perſons, and Cauſes, whatſoever, within that Kingdom; and promiſe to maintain, defend, and advance, the Honour, Dignity, Sovereign Authority, and Prerogatives of his ſacred Majeſty, againſt all Perſons, Powers, and Eſtates, who ſhall impugn or impair the ſame. And whereas, by an Act made in the Parliament holden at *Edinburgh*, the 22d of *May*, 1584. his Majeſty's Royal Power and Authority, over all Eſtates, Spiritual and Temporal, was ratified and confirmed: And it was enacted, that none ſhould preſume to decline the Judgment of his Highneſs, his Heirs, or Succeſſors, on Pain of High-Treaſon. And by divers other Parliaments, it was enacted, That all the King's Leiges ſhould be governed by his Majeſty's Laws, and by no Laws of other Countries, or Realms, on Pain of Treaſon: Notwithſtanding all which, the Priſoner had renounced his natural Allegiance and Duty to his native King; caſt of all Reverence for his Sovereign Authority, and Laws, and dedicated his Mind and Actions to the unlawful Obedience of Foreign Powers, Adverſaries to his Majeſty, and reſolving to ſeduce his Subjects from their Faith and Allegiance, repaired to *Scotland*, in the Month of *June* then laſt paſſed, and by Conferences, Inticements, Maſs-ſaying, and other ſubtil and crafty Means, endeavoured to corrupt many of his Majeſty's Lieges in Religion, and pervert them from their dutiful Obedience to his Majeſty, untill he was detected and apprehended by the Archbiſhop of *Glaſcow*, who, with others of his Majeſty's Council, uſed all charitable Means, to bring him to a Senſe of his heinous Offences, by his Majeſty's Directions: That the Priſoner proved hardned and deaf, to all their Advice; and, at his Examination, had aſſerted and defended, ſeveral treaſonable Poſitions (mentioned in the Indictment, and recited in the Courſe of the Trial) plainly diſcovering, that he approved the Means, and wiſhed the Overthrow of his Majeſty's Eſtate; the Deſtruction of his Perſon; the Seduction of his Subjects from their Allegiance; and thereby, and by every one of his ſaid Anſwers, had committed moſt heinous, deteſtable, and unpardonable Treaſon.

Acts in Scotland *acknowledging the King's Supremacy.*

The King's Counſel, in opening the Indictment, obſerved, That the Priſoner was not indicted purely for ſaying Maſs, and propagating Popery; but for declining his Majeſty's Authority, and maintaining treaſonable Opinions: That the Statutes mentioned in the Indictment, made it Treaſon, not to anſwer the King, or his Council, when a Priſoner was under Examination for High Treaſon: But, that he being examined by the Lord Archbiſhop of *Glaſcow*, and other honourable Perſons, of his Majeſty's Special Commiſſion, refuſed to anſwer divers Interrogatories, and profeſſedly avowed the Pope of *Rome*'s Juriſdiction.---- That it being demanded of him, 1. *Whether the Pope had Power to depoſe the King?* 2. *Whether it was lawful to ſlay his Majeſty, being depoſed by the Pope?* 3. *Whether the Pope had Power to abſolve his Majeſty's Subjects from their Allegiance?* he refuſed to anſwer theſe Points, unleſs he was required ſo to do by the Pope or others authoriſed by him; not acknowledging, that his Majeſty's Crown and Authority, was held immediately of God, the Author of all Government; and had voluntarily declared, that the Oaths of Allegiance and Supremacy were unlawful.

The King's Counſel open the Charge.

Then was read the Acts of Parliament, on which the Indictment was founded, and the Priſoner's Examination before the Council, ſubſcribed by himſelf, which was the principal Evidence produced againſt him.

The Priſoner, inſtead of making a regular Defence, or excuſing his Crimes, proteſted againſt the Juriſdiction of the Court; denied the Facts laid in the Indictment were Treaſon; and even diſputed the Authority of thoſe Parliaments that declared thoſe Facts to be Treaſon: He ſaid, thoſe Parliaments were compoſed of a Number of partial Men, and thoſe Acts made, without the conſent of the chief Men of the Kingdom, That they medled with Matters not ſubject to their Cognizance; and, in ſhort, that he did not care a Fig for them.

The Priſoner juſtifies his Treaſons.

He added, that he knew no other Authority the King had, than what he received from his Predeceſſors, who acknowledged the Pope of *Rome*'s Juriſdiction: If the King would be to him, as his Predeceſſors were to his, he would obey and acknowledge him for King; but if he did otherwiſe, and played the Runagate from God, as he and all of them did, he would not acknowledge him more than his old Hat. The Jury being called, he made one general Exception to them all: He ſaid, they were either Enemies to his Cauſe, or Friends; If they were Enemies, they ought not to be admitted to try him; and, if they were his Friends, they muſt ſtand Priſoners at the Bar, as he did.

After the Jurors were ſworn, he ſaid, he wiſhed they would conſider what they did; for he could not be tried, or judged, by them: Whatever

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Whatever he ſuffered, it muſt be by way of Injury, and not of Judgment: He was accuſed of Treaſon; but he had committed no Offence nor would he beg Mercy.

To which the Archbiſhop anſwered, it was ſtrange he had not offended, when he came into the Kingdom, to *pervert* his Majeſty's Subjects, contrary to the Laws.

Ogilvie replied, I came by Commandment; and, if I was now out of the Kingdom, I would return: I repent of nothing, but that I have not been ſo buſy as I ſhould, in that which you call *perverting:* I hope to come to *Glaſcow* again, and do more good: If all the Hairs of my Head were Prieſts, they ſhould all come into the Kingdom: And, *it being anſwered, The King might, ſurely, diſcharge the Country of thoſe that had offended the Laws*, he ſaid, I am as free as the King; he cannot diſcharge me, if I be not an Offender, which I am not. But he ſeemed to allow, that for Theft, or Murder, the King's Courts might baniſh a Prieſt.

He objects, the Kirk *denied the King's Authority in Spirituals, as well as he.*

The Archbiſhop's Reply to the Priſoner.

He declared, that he declined the King's Authority, and ſhould do it ſtill, in Matters of Religion; for, in ſuch Matters, he ſaid, the King had nothing to do: Obſerving, that the *Kirk*, in like Manner, rejected the King's Authority in Spiritual Matters, as well as he: The Archbiſhop anſwered, that he was miſtaken in the Fact; there was no more in it than than this: Eight Miniſters, in the General Aſſembly at *Aberdeen*, did, indeed, contend, that the Aſſembly could not be diſcharged by his Majeſty's Commiſſioner; but the whole Clergy ought not to be ſlandered for the Offence of a few: Beſides, ſome of them were puniſhed for it, and others confeſſed their Error, and were pardoned: That their Religion taught them, to acknowledge his Majeſty their ſupreme Judge in all Cauſes: That his Lord, the Pope, indeed, did not only deny the Authority that God had given to Kings, but uſurped it himſelf; aſſuming a Power of depoſing and killing them, when he was diſpleaſed with them: Nor did this reſt in Opinion only; they had actually put their Principles in Practice, and cut the Throats of the two laſt *Henry's*, Kings of *France*; but they could not lay ſuch Imputations on the Church of *Scotland:* And then the Archbiſhop demanded of the Priſoner again, *Whether he thought the Pope had Power to depoſe the King? or if it was not Murder to kill the King being depoſed by the Pope?*

The Priſoner again denies the Juriſdiction of the Court.

Maintains the King was Subject to the Pope.

Ogilvie thereupon ſaid, he refuſed to anſwer ſuch Queſtions, becauſe he ſhould thereby acknowledge them Judges in Controverſies of Religion, which he did not. *He would not caſt holy Things to Dogs:* Adding, that if the King offended againſt the Catholick Church, the Pope might puniſh him, as well as a Shepherd, or the pooreſt Man in the Country. That in abrogating the Pope's Authority, the Eſtates of Parliament had gone beyond their Limits; and the King, in uſurping the Pope's Right, had loſt his own. That the Oath of Allegiance was a damnable Oath, againſt God and his Truth, and it was Treaſon to ſwear it; for ſince that Kingdom was Chriſtian, the Pope's ſupreme Power was always acknowledged; that this being caſt off by Act of Parliament, againſt all Reaſon and Conſcience, and the Subject forced to ſwear to a Matter ſo unlawful, it was no wonder that ſuch Attempts and dangerous Courſes were taken againſt his Majeſty. Would the King ceaſe to uſurp on the Pope, he might live without Fear, as well as the King of *Spain*, or any other Chriſtian Prince.

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The King's denying the Pope's Supremacy the Occaſion of the Plots againſt him.

The Priſoner convicted and condemned.

Thus the Priſoner avowing and maintaining the Treaſons for which he was Indicted in Court, the Jury unanimouſly found him Guilty, and he was condemned to die the Death of a Traitor. Whereupon he cried out, God have Mercy upon me; or if there be any hidden Catholicks let them pray for me, but the Prayers of Hereticks I will not have.

His Execution.

He was executed, according to the Cuſtom of *Scotland*, the ſame Day Sentence paſſed on him: But it was obſerved he did not behave himſelf with the ſame Aſſurance and Reſolution at his Execution, as he had done at his Trial; on the contrary, 'tis ſaid, he trembled and ſhook when he came to the Foot of the Ladder, and ſaid he ſhould fall; and thus it was with ſome Difficulty the Hangman got him up: His laſt Words were, *O* Maria, *mater gratiæ, ora pro me! omnes Angeli, orate pro me! omnes Sancti, Sanctæque, orate pro me!* but theſe were ſpoken in ſo low a Voice, that few of the Audience could hear them.

Remarks on Ogilvie's Trial.

King *James* ſcarce ever put any Jeſuit, or Prieſt, to Death, purely for exerciſing his Function, if he ſubmitted himſelf, and promiſed to deſiſt; though it was Treaſon in them to come into, or remain in *Scotland.* He contented himſelf, either with their Impriſonment, or Baniſhment: But this Jeſuit ſo daringly challenged, and defied the civil Powers, that there appeared a Neceſſity of taking him off. But, if we may credit thoſe who give an Account of his Execution, his Heart failed him at laſt. He does not appear to have met Death with that Joy that Saints and Martyrs uſually do.

There is an Obſervation I cannot avoid making on the Laws of *Scotland*; and that is, that a Man's Silence was, by ſeveral Acts, made treaſonable there. If a Perſon was examined before the Council, concerning a treaſonable Conſpiracy, and refuſed to anſwer; this Refuſal was looked upon as a renouncing the King's Authority, and interpreted High-Treaſon: Whereas no Man is bound to anſwer in a Criminal Caſe, by the Laws of *England*, eſpecially where the Anſwer tends to accuſe himſelf.

The

1618. 16 Jac. I.

Wraynham's *Trial.*

The Trial of —— WRAYNHAM, or WRENHAM, for *Slandering* the Lord Chancellor *Bacon*, before the Court of *Star-Chamber*, *Paſch.* 1618. 16 *Jac.* I.

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The Caſe.

THE Caſe, in ſhort, was this: The Lord Chancellor *Bacon* at his coming to the Great Seal, found a Cauſe in that Court, between *Wraynham*, and *Fiſher*, concerning the Value of a Leaſe, in which the former Lord Chancellor had made ſeveral Orders and Decrees: Theſe the Lord *Bacon* thought fit to reverſe, or alter, to the Advantage of *Fiſher:* Whereupon *Wraynham* complained of his Lordſhip to his Majeſty, and at length wrote a *Quarto* Book, and dedicated it to the King, wherein he ſet forth his Caſe at large, charging the Lord Chancellor *Bacon*, with *Injuſtice* and *Oppreſſion.*

The moſt obnoxious Paſſages in this Book, or Libel, as it was ſtiled, were thoſe that follow, *viz.*

That he (Wraynham) *had two Decrees in the firſt Lord Chancellor's Time, both under the Great Seal; and yet both altered, ſince his Death, and cancelled by this Lord Chancellor, in a prepoſterous Manner, without Cauſe, without new Matter, without any legal Proceedings, without Precedent, upon the Party's bare Suggeſtion, and without calling him* (Wraynham) *to anſwer: And this he had done, to reward* Fiſher's *Fraud and Perjuries, to palliate his unjuſt Proceedings, to rack Things out of Joint, and to confound his* (Wraynham's) *Eſtate; adding, that Injuſtice was worſe than Murder; and that his Lordſhip had devoured him and his Family*; and having heard that his Lordſhip had ſatisfied his Majeſty in the Matter, the Book ſays, *He that had done it unjuſtly, muſt, to maintain it, ſpeak untruely, adding Falſhood to Injuſtice*; and, in another Place, the Book ſays, *It is given out, my Lord hath begged* Wraynham's *Pardon*, (begged his Majeſty to forgive *Wraynham) which, though it be the Shew of a gentle Heart, argues a guilty Conſcience, and is but my Lord's Cunning to avoid the Hearing of the Cauſe*; telling his Lordſhip, *he had palliated Oppreſſion with Greatneſs, Wit with Eloquence; and that the Height of Authority made Men preſume:* That *his Lordſhip uſed ſecret Means, that the Unſoundneſs of his Actions might not be ſeen:* That, *He had raiſed a Report from Hell, of the late Maſter of the Rolls, which was confuted before his Face, and damned before his Death:* That, *the late Maſter of the Rolls grounded that Report, upon Witneſſes that ſwore Impoſſibilities, groſs Abſurdities, and apparent Untruths.*

The Evidence.

The Evidence againſt *Wraynham* was the Book, or Libel, itſelf, out of which theſe Paſſages were extracted.

Wraynham's *Defence.*

Wraynham, in his Defence, ſaid, that his Book conſiſted of three Parts: 1. An Epiſtle to his Majeſty. 2. The Body of the Book, which related the Truth of all the Proceedings; and, 3, a concluſive Speech, in the Nature of an Epilogue.

As to his Complaint againſt the Lord Chancellor, he ſaid, he muſt fly for Succour and Protection to the King, who had been pleaſed to declare, that, if any were wronged in Point of Juſtice, they might come to him for Redreſs: That, if they diſcovered *Bribery or Corruption*, they ſhould come boldly; but, beware of the Juſtneſs of their Cauſe.

From whence he inferred, 1. That, in his Majeſty's Opinion, a Man might be wronged in a Court of Juſtice; and 2. That he was willing to receive the Complaint, and reform what was amiſs: He hoped, therefore, their Lordſhips, would not conceive, that barely to complain was a Fault; eſpecially when his Majeſty had ſaid, *Why do you ſpare to complain?*

Then he obſerved, that the Attorney-General had taken the general Expreſſions in his Book, and applied them to my Lord Chancellor, which, he ſuggeſted, he never intended as Reflections on that Lord; declaring, he had no ſuch Meaning, as the King's Council would fix upon them. He obſerved, that the Word *Injuſtice* was what he was principally charged with, that all the other obnoxious Expreſſions he had uſed might be comprehended in this; and ſaid, *If a Man proved the Juſtice of his Cauſe, he proved the Judgment given againſt him to be Injuſtice:* That he was neceſſitated to uſe this Word: 1. Becauſe, unleſs he had particularly accuſed his Lordſhip of Injuſtice, he had no Hopes of obtaining a Hearing of his Majeſty; and 2. His Miſeries forced him to it.

That, underſtanding the Lord Chancellor had endeavoured to ſatisfy his Majeſty of the Juſtice of his Decrees, by producing the Report of *Philips*, late Maſter of the Rolls (to whom the Matter had been referred by the late Lord Chancellor) which Report, he confeſſed, might not only ſatisfy the Lord Chancellor, but the King himſelf; he ſaw there was no other Courſe, but to Anſwer the Report by writing the Book, with which he was charged; in the making whereof, he had muſtered together his Miſeries. He ſaw his Lands taken away, which had been before eſtabliſhed to him; and after ſix and forty Orders, and twelve Reports, made in this Cauſe; nay, after Motions, Hearings, and Rehearings, fourſcore in Number, he beheld all overthrown in a Moment; and that without a new Bill preferred. He ſaw a Priſon gaping for him, in which he muſt from thenceforth ſpend all the Days of his Life; for, in this Suit, he had ſpent almoſt three thouſand Pounds. Many of his Friends were engaged for him; ſome damnified, others undone; and this accompanied with many terrible Miſeries, like to befal his Wife, and four Children, the eldeſt of which was but five Years old; ſo that they, who formerly gave Bread to others, muſt now beg Bread of others, or elſe ſtarve; and there being no means to move his Majeſty to hear the Cauſe, but to accuſe his Lordſhip of Injuſtice, (his Majeſty declaring he would not be troubled with hearing ſuch Cauſes, unleſs he could charge the Judge with Injuſtice, or Bribery): This, and all theſe, moved him to be ſharp and bitter; and

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and to uſe Words, though dangerous in themſelves, yet he hoped pardonable in ſuch Extremities; and, if this would not acquit him, deſired their Honours would move the King to pardon him.

The Court will not let him enter into the Merits of the Cauſe.

Then Mr *Wraynham* was proceeding to open the Merits of the Cauſe in *Chancery*; but the Lord Treaſurer ſaid, that was contrary to all Rules: They could not enter into the Merits: And the Attorney-General, *Yelverton*, put him upon inſtancing in one ſingle Point, wherein the Lord Chancellor had done him Injuſtice. Inſtead of which, *Wraynham* ſaid, had he thought his Majeſty would not have heard his Cauſe, he would have ſat down in Silence, and devoured his Sorrow. He ſubmitted himſelf in all Things to their honourable and clement Cenſure, beſeeching their Pardon and craving their Compaſſion.

The Reply.

Mr. Serjeant *Crew*, in his Reply to *Wraynham*, ſaid, he obſerved the Priſoner at the Bar had made that Submiſſion at laſt, which he ought to have begun with: That the Flux of foul Mouths muſt be ſtopped, otherwiſe the greateſt Magiſtrates, and even Majeſty itſelf, would be ſlandered, and traduced: That the Lord Chancellor, that was dead, had given Judgment according to his Conſcience; and the preſent Lord had judged according to his Conſcience, and the Integrity of his Heart. The Cauſe might appear to them in different Lights; and each of them had delivered his own Senſe, without any *binding* Decree.

That the Lord which was dead, when he was alive, was one of the Oracles of Wiſdom of his Time; and the preſent Lord was enriched with great Ornaments of Nature. No Man, no Magiſtrate, heard with more Attention, Juſtice, Underſtanding, and Patience; and *Wraynham* thus to traduce him, was a foul Offence. *He could not charge him with Corruption; for he always deſpiſed Riches, and ſet Honour and Juſtice before his Eyes*, and therefore demanded their Lordſhips Cenſure of *Wraynham*.

Wraynham cenſured.

The celebrated Sir *Edward Coke* was the firſt of the Court of *Star-Chamber* that delivered his Opinion in this Cauſe. He ſaid, a Complaint to his Majeſty, or a Petition, by any Man that thought himſelf wronged, he held to be no Offence; yet upon the Statute of *Weſtminſter*, and at Common Law, he could ſhew, that where Petitions were made to the King, in an unfit Manner, they had been ſeverely puniſhed. He was ſorry, he ſaid, that Mr. *Wraynham*, a Man of excellent Parts, ſhould write ſuch a ſcandalous Book, which in reallity was no Petition: He himſelf had entitled it, *A Review, or Revivor, of the Report of the Maſter of the Rolls* Philips, *and the Decree of the Lord Chancellor*: In which he dealt not like a Petitioner, but a Cenſurer, cenſuring every Man that had been concerned in the Cauſe. He charged the Lord Chancellor with Injuſtice; not complaining of any Particular to be referred to Examination, but ſaid in general, *He had done unjuſtly, was worſe than a Murderer; and that he had informed the King falſly: That the Height of Authority made Men preſume*; citing that Paſſage in Scripture, *Woe be to them that write wicked Decrees*: And in another Place ſays, *That Oppreſſion is palliated with Wit and Eloquence.* 1618. 16 Jac. I.

That he had not ſpared the Dead. The Maſter of the Rolls, an excellent Chancery-Man, of great Dexterity and Diligence, and never charged with Corruption, he had accuſed of ſo high a Degree of Injuſtice, as *to omit ſome of the material Proofs; to ſhift off others; to wreſt the Equity of the Cauſe, with making an unjuſt and corrupt Gloſs upon a falſe Text*; declaring, *that his Report came from Hell.* Their Lordſhips remembered, that ſlandering the Dead was puniſhable in that Court: *Lewis Pickering* particularly, in his Time, was cenſured, for ſlandering an Archbiſhop that was dead; for ſuch Slanders might wrong thoſe that were related to the Deceaſed.

One puniſhed for ſlandering a dead Archbiſhop.

Then Sir *Edward* cited ſome Precedents of Perſons, that had been puniſhed for reflecting on the Judges; particularly *Thomas Wilbraham. Mich.* 18 *Edw.* III. who petitioned the King againſt the Juſtices of the *King's-Bench*, for *that they had not done according to Law and Reaſon*: For which *Wilbraham* was indicted, convicted, and fined, by the *King's-Bench*: And *Humphrey Hunney*, who complained to King *Edw.* III. that Sir *William Scot*, Chief Juſtice, had awarded an Aſſize contrary to Law, was fined and impriſoned by the Judges to whom the King referred it.

That one Judge might differ from another in his Opinion, and yet both be ſincere upright Judges. The famous *Dyer* gave Judgment in the *Common-Pleas*, which was reverſed in the *King's-Bench*; and yet *Dyer* diſcharged his Conſcience: Though the Judgment was afterwards reverſed, he was not thought guilty of Injuſtice. If the Lord Chancellor, that was living, differed from the Lord Chancellor that was dead; this was not ſtrange: It had ever been and would be; *but if a Judge's Conſcience was oiled and moiſtened with Corruption, all was naught:* And concluded, that he agreed in all Things with the Sentence given in *Foorth's* Caſe, 2 *Jac.* And in this Judgment all the Lords of the Court of *Star-Chamber* agreed.

Remarks on the Trial of Wraynham.

From the Speeches made by Sir *Edward Coke*, and the reſt of the Lords of the *Star-Chamber*, at the Cenſure of *Wraynham*, it appears, that he was not only a Man of Quality and Figure in the World, but a Gentleman of excellent Parts: However, he was ruined, it ſeems, by a tedious and expenſive Suit in *Chancery*, and the Injuſtice and Oppreſſion of his Judges: And with his Fortune, this unhappy Gentleman appears to have loſt his Friends. The whole Court ſeem to have been in a Confederacy to complete his Deſtruction: Such was the Character of the celebrated Lord *Bacon*, that no Suggeſtions could be heard againſt him, how reaſonable ſoever. It could not enter into the Heart of a Man, that a Nobleman, of his fine Senſe, and philoſophical Turn of Mind, who perfectly underſtood the Rules of Morality, and appeared generous and benevolent, even to Profuſion, could be touched with the ſordid Vices of Avarice, Extortion, and Oppreſſion: And though Bribery and Corruption appear to have been at the greateſt Height in the Court of *Chancery*, at

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at this Time, and practiſed ſo openly, that when a Suitor came to ſee his Counſel, the firſt Queſtion asked him was, *What Friends he had at York-Houſe*, (the Lord Chancellor's)? and his Servants were known to take one Side, or other, in almoſt every Cauſe: Yet did the mighty Lord *Bacon*'s Reputation blind the Eyes of all Mankind, and render the moſt palpable Corruptions doubtful.

The unfortunate *Wraynham* knew he had great Injuſtice done him, and violently ſuſpected Bribery in the Caſe; but durſt not charge the Chancellor with it, for Fear of an Action of *Scandalum Magnatum*. On the other Hand, he found his Eſtate was gone, his Family undone, and he had nothing to expect, but a Goal, as he informs us in his Caſe, unleſs he could find ſome Redreſs. In this Diſtreſs he applied himſelf to his Majeſty, petitioning to be heard before the King and Council: But was told, the Council could not trouble themſelves with every Cauſe, where the Parties were diſſatisfied with the Chancellor's Decrees; they muſt attend no other Buſineſs, if they did: But, if the Petitioner could charge the Lord Chancellor with *Injuſtice*, or with *Bribery*, or *Corruption*, the King would hear him: Whereupon *Wraynham* wrote the Book above-mentioned, and dedicated it to his Majeſty; wherein he charged the Chancellor with *Injuſtice* and *Oppreſſion*, believing, if his Majeſty would hear his Cauſe, he ſhould be able to demonſtrate, there had been foul Play. For, ſays he, in his Defence, if I can ſhew my Cauſe was juſt, and the Lord Chancellor has decreed it againſt me, by conſequence I ſhall prove his Injuſtice: But neither the King, nor the Court of *Star-Chamber*, would enter into the Merits of the Cauſe; declaring, his Book was a Libel, becauſe he had charged the Chancellor with Injuſtice and Oppreſſion, which he could not prove: Whereupon *Wraynham* deſpaired of Succeſs, and ſubmitted himſelf to the Mercy of his Judges; who, not conſidering he had already loſt all he had, in purſuing this unlucky Cauſe, thought fit to finiſh his Ruin, by fining and impriſoning him; though it appeared, within the Space of two Years, that his Adverſary, Sir *Edward Fiſher*, carried his Cauſe, by Dint of Bribery, having given the Lord Chancellor an hundred Pounds, and upwards, at one Time; beſides what he might have preſented him with at other Times, and diſtributed among that Lord's Servants, who were known to take a Part in every Cauſe that came before his Lordſhip, as has been related already.

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But, ſuppoſing there had been no Bribery in the Caſe, what a monſtrous Thing is it, in a Country that boaſts of the Equity of her Laws, that a Suitor ſhould be kept ſeven, perhaps two ſeven Years in ſuſpence, and the Charges of the Suit frequently exceed the Matter in Diſpute; and this is an ordinary Caſe, like that before us, where only the Value of a Leaſe was to be determined?

Wraynham, in his Defence, ſays that in this trifling Cauſe, there had been ſix and forty Orders, and twelve Reports, made; and no leſs than fourſcore Hearings, Rehearings, and Motions; and, after all theſe, he ſaw his Lands taken away, which had been decreed him by the former Lord Chancellor; and he muſt expect to end his Days in a Goal, having ſpent three thouſand Pounds in the Cauſe, and ruined ſeveral of his Friends, who ſtood engaged for him. Were it not better to live in a Country where there are no Laws, than where Laws are thus adminiſtred? Where it is manifeſt, in a thouſand other Caſes as well as this, that the longeſt Purſe ſeldom fails of Succeſs, let the Cauſe be never ſo unjuſt. If there be no Bribery in the Caſe, the very Expence and Delays of a *Chancery* Suit undo the Suitor; and he is obliged to give up his Right, for Want of Money to defend it: And what renders theſe Proceedings ſtill more inſupportable now, than they were in the Lord *Bacon*'s Days, is, the extravagant Riſe of Counſel's Fees, and the Stamps, with which all the Proceſs in *Chancery*, and other Courts, are loaded at this Day. We ſeem to block up the Way to Juſtice, as though it were a Crime, for a Man to attempt the Recovery of his Right.

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Lord Bacon's Trial.

Proceedings in Parliament, againſt the Right Honourable FRANCIS Lord *Verulam*, Viſcount *St. Albans*, and Lord Chancellor of *England*, for *Bribery* and *Corruption*, the 19th, *&c.* of *March*, 1620. 18 and 19 *Jac.* I.

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A Motion in the Houſe of Commons charging him with Bribery.

ON Thurſday, the 15th of *March*, 1620. Sir *Robert Phillips*, from the Committee of the Commons, appointed to enquire into Abuſes in the Courts of Juſtice, reported to the Houſe, that they had received two Petitions, charging the Lord Chancellor with Corruption, in his Office.

In Awbrey's *Caſe.*

That the firſt Petition was from *Awbrey*, which ſhewed, that he, having a Cauſe depending before the Lord Chancellor, and being tired with Delays, was adviſed by ſome near my Lord, to quicken him, by making his Lordſhip a Preſent of 100*l.* That he, thereupon, with ſome Difficulty, procured the ſaid Sum of an Uſurer, and went with Sir *George Haſtings*, and Mr. *Jenkins*, to the Lord Chancellor's Houſe, in *Gray's-Inn*; and thoſe two Gentlemen carried in the Money to his Lordſhip; and, when they came out, ſaid, my Lord was thankful, and aſſured him of Succeſs in his Buſineſs.

That, Sir *George Haſtings*, a Member of the Houſe, had acknowledged the giving *Awbrey* that Advice, and carrying in the Money to my Lord; but ſaid, he preſented it as from himſelf, and not from *Awbrey:* Nor had it the Effect that the Petitioner expected. This Charge was confirmed by ſeveral Letters.

In Egerton's *Caſe.*

The ſecond Petition was from *Edward Egerton*, who ſhewed, that he was perſuaded by Sir *George Haſtings*, and Sir *Richard Young*, to preſent his Lordſhip with a Sum of Money;

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but that he had before given my Lord a Piece of Plate, of the Value of 52 *l.* as a Teſtimony of his Love; and now he procured 400 *l.* and ſent it to his Lordſhip by Sir *George Haſtings* and Sir *Richard Young*, as a Gratuity, for what my Lord had done for him, when he was Attorney-General: That theſe Gentlemen told the Petitioner, my Lord ſcrupled the taking it at firſt, and ſaid, it was too much; but was at length perſuaded to take it, as for Favours paſſed, and returned him Thanks, ſaying, he did not only enrich him, but laid a Tie on him, to aſſiſt him in his lawful Buſineſs: That Sir *George Haſtings* and Sir *Richard Young*, Members of the Houſe, acknowledged the Delivery of the Purſe; but ſaid, they knew not what was in it.

The Report alſo took notice, that Doctor *Field*, now Biſhop of *Landaff*, had undertaken to procure Mr. *Egerton* Succeſs in his Cauſe, on condition of his entering into a Recognizance of 10000 Marks; with Condition, that if my Lord Chancellor decreed it for him, 6000 Marks ſhould be diſtributed among thoſe honourable Perſons that ſolicited his Cauſe for him.

This Matter being ordered to be further conſidered by the Committee, Sir *Robert Phillips* reported on the 17th of *March*, that it appeared plainly in *Awbrey*'s Caſe, there was a Suit depending at the Time the Money was preſented: And that Sir *George Haſtings* had at length acknowledged, when he gave the Lord Chancellor the 100 *l.* he ſaid, that it was to help *Awbrey* in his Cauſe. However, not long after, a very prejudicial and murdering Order was made againſt *Awbrey*: Whereupon, Sir *George* moved, it might be rectified; and my Lord promiſed to do it; but did not: And that there were Letters produced, from *Awbrey* to the Lord Chancellor, about this Buſineſs.

And, in *Egerton*'s Caſe, when the 400 *l.* was preſented to the Lord Chancellor, there was a Suit depending in the *Star-Chamber*; and Sir *Rowland Egerton*, about the ſame Time, preferred a Petition to the King, for a Reference of the Matter to the Lord Chancellor: Whereupon, his Lordſhip cauſed Mr. *Edward Egerton* to enter into a Bond of 6000 Marks, to ſtand to his Award: And an Award being afterwards made, and refuſed by *Edward*, a Suit was, by the Lord Chancellor's Direction, commenced againſt him, and the Bond of 6000 Marks aſſigned over to Sir *Rowland Egerton*: And then it was, that Doctor *Field* adviſed Mr. *Edward Egerton* to apply himſelf to Mr. *Damport*, and Sir *John Butler*, to ſolicit his Cauſe for him, and drew Mr. *Edward* into a Bond of 10000 Marks, for the Payment of 6000, as related already: And it being demanded of *Damport*, how much he and Doctor *Field* were to have of the Money, he anſwered, he did not remember the certain Sum: but it was more than any Cauſe could deſerve, in any Court of Juſtice.

That, in *Awbrey*'s Caſe, it appeared, that Sir *George Haſtings*, being at *Hackney*, where he dwelt, was ſent for by the Lord Chancellor: And when Sir *George* came, the Lord Chancellor ordered every Body elſe out of the Room; and ſaid, *Sir* George, *I am ſure you love me; and, I know, that you are not willing, that any Thing, done by you, ſhould reflect Diſhonour upon me. I hear, that one* Awbrey *intends to petition againſt me: He is a Man, that you have ſome Intereſt in; you may take him off, if you pleaſe:* And that Sir *George* afterwards deſired *Awbrey*, to let him ſee his Petition; and he ſhewed it to my Lord; and his Lordſhip promiſed, to do him Juſtice: But he could have no Remedy, and ſo the Petition went on.

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That, ſome Time after, Sir *George*, diſcourſing with the Lord Chancellor, told him, *He muſt lay it* (the Buſineſs of *Awbrey*) *upon his Lordſhip*; to which my Lord replied, *If you do*, George, *I muſt deny it, upon my Honour.*

Upon this Report, it was moved, that Sir *George Haſtings*, and Sir *Richard Young*, might be ſequeſtred from Parliament: But they were permitted to keep their Seats; and it was ordered, that the Complaint of *Awbrey* and *Egerton*, againſt the Lord Chancellor, and the Biſhop for Corruption, ſhould be drawn up by Sir *Robert Phillips*, Sir *Edward Coke*, Mr. *Noy*, and Sir *Dudley Diggs*; and that the ſame ſhould be related to the Lords, without Prejudice or Opinion, at a Conference.

A Committee of both Houſes examine the Matter.

The ſame Day, the Commons received a Meſſage from his Majeſty, in which he ſaid, he was ſorry to hear of the Complaints againſt the Lord Chancellor: It had always been his Care, to advance the beſt Men to Places; though no Man could prevent ſuch Accidents: But his Comfort was, the Houſe was careful to preſerve his Honour; and propoſed a Committee, of ſix of the Upper Houſe, and twelve of the Lower Houſe to examine the Matter.

In anſwer to which, the Commons deſired, the like Meſſage might be ſent to the Lords, that they might have a Conference with them about it.

The Commons prefer only a verbal Charge againſt the Lord Chancellor.

On the 20th of *March*, Sir *Robert Phillips* reported from the Conference, that the Lords demanded, if they would not reduce their Complaint into Writing: And it was reſolved, that they would not; it only conſiſting of two or three Points, clear and plain.

Two Members allowed to give Evidence before the Lords.

A Meſſage came from the Lords, the ſame Day, ſignifying, that they had taken into Conſideration, the laſt Conference, and ſhould need the Teſtimony of two Members of that Houſe; deſiring, they might attend voluntarily, without Order, as private Perſons, and give their Teſtimony upon Oath: And it was anſwered, that they would attend as private Gentlemen, and be examined.

Bribery, in Lady Wharton's Caſe.

Sir *Robert Phillips* reported further, that the Committee of the Commons had examined *Churchill*, one of the Regiſters in *Chancery*; and it appeared that, the Lady *Wharton* having a Cauſe depending there, an Order was made, for the Diſmiſſion of her Bill, by Conſent of the Council on both Sides; which the Lady diſliking, took *Churchill* into her Coach, and carried him to the Lord Chancellor's; and ſo managed the Matter, that the Regiſter was commanded, not to enter the laſt Order; and my Lady being left at Liberty, thereby, to proſecute her Suit, brought it to a Hearing, and obtained a Decree.

That

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That ---- *Keeling* being examined, declared, that about the Time of paſſing the ſaid Decree, my Lady took an hundred Pounds, and carried it to *York-Houſe*, to the Lord Chancellor, in a Purſe; and, my Lord asking her, *What ſhe had in her Hand?* ſhe anſwered, *a Purſe of her own making*, and preſented it to him; who took it, and ſaid, *What Lord could refuſe a Purſe of ſo fair a Lady's Working?* That, afterwards, my Lord decreed for her; but the Decree was not perfected, till 200*l.* more was given, in the Preſence of one *Gardiner*.

Gardiner, *Keeling*'s Man, confirmed the Payment of the 300 *l.* for the Decree, *viz.* 100 *l.* firſt, and 200 *l.* afterwards: And this purchaſed Decree, being lately damned by the Lord Chancellor, occaſioned the Lady's Complaint.

Keeling added, that Sir *John Trevor* preſented the Lord Chancellor with 100 *l.* by the Hands of Sir *Richard Young*, for a final End of this Cauſe: And Sir *Richard Young* declared, that, when he attended the Lord Chancellor, Sir *John Trevor*'s Man brought a Cabinet, and a Letter, to my Lord, and entreated him to deliver it, which he did, openly.

Other Complaints of Bribery made to the Commons.

On the 21ſt of *March*, 1620. Sir *Robert Phillips* reported, that they were informed of ſeveral other Corruptions, by *Keeling* and *Churchill*; particularly, that his Lordſhip had taken great Sums in the Cauſes of *Hull* and *Holman*, *Wroth* and *Manwaring*, *Peacock* and *Reynell*, *Barker* and *Bill*, *Smithwick* and *Welch*: That, in this, and other Cauſes, my Lord would decree Part; and, when he wanted more Money, he would ſend for more, and then decree, another Part: And in moſt Caſes my Lord's Servants had undertaken one Side or another; inſomuch that it was uſual for Counſel, when their Clients came to them, to ask, what Friend they had at *York-Houſe?*

Decrees made by Parcels, to extort Money.

My Lord's Servants bribed in every Cauſe.

The Commons communicate theſe Complaints to the Lords.

It being ordered that a Meſſage be ſent to the Lords, by Sir *Robert Phillips*, to relate the Caſe of the Lady *Wharton*, and the Informations of *Churchill*; Sir *Robert* reported from the Lords, That they acknowledged the great Care of the Commons, returned them Thanks for their Correſpondence, and aſſured the like on their Part for ever.

The Lords examine the Matter.

** Duke of Buckingham.*

Lord Chancellor excuſes his Abſence.

The Caſe of the Lord Chancellor coming under Debate in the Houſe of Peers, the 19th of *March*, the Lord Admiral * preſented a Letter to that Houſe, the ſame Day, from his Lordſhip, deſiring them to excuſe his Abſence, becauſe he was ſo very ill, that he thought he had but a little Time to live; however, underſtanding there were ſome Complaints of baſe Bribery coming before their Lordſhips againſt him, he would be glad to preſerve his Honour and Fame, and therefore requeſted, 1. That they would preſerve a good Opinion of him, till his Cauſe was heard; 2. That they would give him Time to adviſe with Council, and put in his Anſwer; 3. That he might be allowed to except againſt the Witneſſes, to croſs examine them, and produce his own Witneſſes; and, Laſtly, That their Lordſhips would not be prejudiced againſt him from the Number of Complaints that ſhould be exhibited, conſidering he did not make leſs than two thouſand Orders and Decrees within the Space of a Year, and the Courſes that were taken to hunt out Complaints againſt him; but that he might anſwer them ſeparately, according to the Rules of Juſtice.

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To this Letter their Lordſhips anſwered, That they intended to proceed in his Cauſe according to the Right Rules of Juſtice; and ſhould be glad if his Lordſhip ſhould clear his Honour therein: To which End they deſired his Lordſhip to prepare for his juſt Defence.

He is order'd to prepare his Defence.

Then the Lords proceeded to examine the ſeveral Complaints of the Suitors, and reduced them to the following Particulars, *viz.*

The ſeveral Complaints of the Suitors before the Lords.

	l.	*s.*	*d.*
That in the Cauſe between Sir *Rowland Egerton*, and *Edward Egerton*, his Lordſhip received on the Part of Sir *Rowland* before he decreed for him,	300	0	0
Of *Edward Egerton*, in the ſame Cauſe,	400	0	0
In the Cauſe between *Hody* and *Hody*, a Dozen of Buttons (after the Cauſe ended) of the Value of	50	0	0
Of the Lady *Wharton*,	310	0	0
Of Sir *Thomas Monk*,	100	0	0
Of Sir *John Trevor*,	100	0	0
Of one *Young*,	100	0	0
In *Fiſher* and *Wraynham*. Of *Fiſher*,	106	0	0
In the Cauſe of *Kennedy* and *Valore*. Of *Kennedy* a Cabinet worth	800	0	0
Of *Valore*, borrowed at twice,	2000	0	0
In the Cauſe between *Scot* and *Lenthall*. Of *Scot*,	200	0	0
Of *Lenthall*,	100	0	0
In *Wroth* and *Manwaring*. Of *Wroth*,	100	0	0
Of Sir *Ralph Hanesby*,	500	0	0
Of the Lord *Montague*, and more promiſed at the End of the Cauſe	600, or 700		
Of one *Dunch*,	200	0	0
In *Reynell* and *Peacock*. Of *Reynell*, 200 *l.* in Money, and a Diamond worth 5 or 600 *l.*	700 or 800	0	0
Of *Peacock*,	100	0	0
Of *Barker*,	700	0	0
There being a Reference from his Majeſty to his Lordſhip of a Buſineſs between the *Grocers* and *Apothecaries*. Of the *Grocers*	200	0	0
Of the *Apothecaries* (beſides a rich Preſent of Ambergreaſe)	150	0	0
Of the *French* Merchants to oblige the *London* Vintners to take 1500 Tuns of Wine,	1000	0	0

And laſtly, that he had given way to great Exactions by his Servants, in reſpect of private Seals, and ſealing Injunctions.

The Lord Chancellor makes a general Submiſſion and Confeſſion.

On the Twenty fourth of *April*, the Prince ſignified to their Lordſhips, that the Lord Chancellor had ſent a Submiſſion, which was read in the Houſe; wherein he tells their Lordſhips, That having underſtood the Particulars of the Charge, not formally from the Houſe, but enough to inform his Conſcience and Memory, he found Matter ſufficient and full, both to move him to deſert his Defence, and

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and to move their Lordſhips to condemn and cenſure him.

Neither would he trouble their Lordſhips with ſingling out thoſe Particulars, which might be moſt eaſily anſwered, or prompt their Lordſhips to obſerve upon the Proofs, where they came not home; or with Scruples touching the Credit of the Witneſſes; nor would he obſerve how far a Defence, in divers Things, might extenuate the Offence, in reſpect of the Time or Manner of the Gift, but leave thoſe Things to their own Obſervations on the Evidence; and ſubmitted himſelf wholly to their Pity and Grace.

He made it his humble Suit to their Lordſhips, that his penitent Submiſſion might be his Sentence, and the loſs of his Seal his Puniſhment: That their Lordſhips would ſpare any farther Sentence, and recommend him to his Majeſty's Grace and Pardon for all that was paſt.

The Lords having conſidered this Submiſſion, and heard the Particulars of the Corruptions charged on the Lord Chancellor, with the Proofs; they ſent a Copy of them, without the Proofs, to the Lord Chancellor, and the following Meſſage, *viz.*

A Particular of his Charge ſent him. That his Lordſhip's Confeſſion, in the ſaid Submiſſion, was not full, for three Cauſes.

1. His Lordſhip confeſſed not any particular Bribe, or Corruption.

2. Nor ſhewed how he heard the Charge thereof.

3. The Confeſſion was afterwards extenuated, and therefore the Lords had ſent him a Particular of the Charge, and expected his Anſwer to the ſame with all convenient Expedition.

To which the Lords require his Anſwer.

To this Meſſage, the Lord Chancellor anſwered, he would return the Lords an Anſwer with ſpeed.

On the Twenty-fifth of *April*, the Lords ſent the Lord Chancellor another Meſſage, by Mr. Baron *Denham* and Mr. Attorney General, (*viz.*) That they had received a doubtful Anſwer to their Meſſage, ſent him the Day before; and therefore deſired to know, directly and preſently, whether he would make his Confeſſion, or ſtand upon his Defence.

He abandons his Defence. To which the Lord Chancellor anſwered, by the ſame Meſſengers, That he would make no Manner of Defence, but acknowledge Corruption, and make a particular Confeſſion to every Point, and after that an humble Submiſſion; but begged Leave, where the Charge was more full than the Truth of the Fact was, he might declare the Truth in ſuch Particulars. And the Lords allowing him Time, till *Monday* the Thirtieth of *April*, to ſend his Confeſſion and Submiſſion, the Lord Chancellor then ſent it accordingly.

And makes a particular Confeſſion, and Submiſſion. It was directed, *To the Right Honourable the Lords Spiritual and Temporal, in the High Court of Parliament aſſembled*; and ſtiled, *The humble Confeſſion and Submiſſion of me, the Lord Chancellor.*

1. To the firſt Article he confeſſed, that upon a Reference from his Majeſty, of all Suits between Sir *Rowland Egerton* and *Edward Egerton*, both Parties ſubmitted to his Award, by reciprocal Recognizances in ten thouſand Marks a piece: That, after divers Hearings, he made his Award, with the Advice of Lord *Hobert*; and ſome Days after, the 300*l.* mentioned in the Charge, were delivered to him from Sir *Rowland*. That Mr. *Edward Egerton* flying off from the Award, a Suit was begun in *Chancery* by Sir *Rowland Egerton*, to have the Award confirmed; and a Decree was made thereupon.

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2. To the ſecond Article, he confeſſed, that ſoon after his coming to the Seal, when many preſented him, he received the 400*l.* mentioned in this Article, of Mr. *Edward Egerton*; but, as he remembered, it was for Favours paſt.

3. That in the Cauſe between *Hody* and *Hody*, about a Fortnight after the Cauſe was ended, there were Gold Buttons, about the Value of 50 *l.* preſented him.

4. That in the Cauſe between the Lady *Wharton*, and the Coheirs of Sir *Francis Willoughby* he received of the Lady *Wharton* 200 *l.* in Gold and at another Time an hundred Pieces, while the Cauſe was depending.

5. That he received of Sir *Thomas Monk* one hundred Pieces, but it was long after his Suit was ended.

6. That he received of Sir *John Trevor*, as a New-Year's-Gift, 100*l.* but he confeſſed it was while is Cauſe was depending.

7. In the Cauſe between *Holman* and *Young*, he received of *Young* an 100*l.* but it was long after the Cauſe was ended.

Bribery proved in Wraynham's Caſe. 8. That while the Cauſe was depending between *Fiſher* and *Wrenham*, (or *Wraynham*) he did receive of Sir *Edward Fiſher* a Suit of Hangings, of the Value of about 160*l.* towards furniſhing his Houſe; and was at the ſame Time preſented by others, who were no Suitors, with Furniture for his Houſe.

9. As to the Charge of his receiving a Cabinet, of the Value of 800*l.* of Sir *John Kennedy*; a Cabinet was indeed ſent to his Houſe by Sir *John*, but not of half that Value; but he refuſed to accept it, and was determined to ſend it back again: That one *Pinkney*, who ſtood engaged for the Money to pay for the Cabinet, deſired he might have it; and thereupon Sir *John* entreated his Lordſhip, that he would not diſgrace him by returning the Gift, much leſs put it into a wrong Hand; and that he was ready to return it to whom their Lordſhips ſhould appoint.

10. He confeſſed he had borrowed 2000 *l.* of *Vanlore*; but looked upon it as a Debt, and was obliged to repay it.

11. He acknowledged his receiving 200 *l.* of Mr. *Scott*, about a Fortnight after the Decree paſſed for him.

12. That he received 100 *l.* of Sir *John Lenthall*, about a Month after the Decree paſſed.

13. That the Cauſe between *Wroth* and *Manwaring* was ended by his Arbitrement, by Conſent of Parties, and he received of Mr. *Wroth* 100 *l.* about a Month after the Cauſe was ended.

14. That he received of Sir *Ralph Hanesbye*, while his Cauſe was depending, 500 *l.*

15. That

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15. That he did borrow the 500 *l.* mentioned in this Article, of *Compton*; but looked upon it as a Debt which he was obliged to repay.

16. In the Cauſe between Sir *William Brounker* and *Awbrey*, he did acknowledge his receiving 100*l.* of *Awbrey*.

17. He confeſſed, he received Money of the Lord *Montague*, while his Suit was depending to the Amount of 6 or 700*l.*

18. He confeſſed, his receiving 200*l.* of Mr *Dunch*; but thought it was ſome Time after the Decree.

19. He confeſſed his receiving 200*l.* of Sir *George Reynell*, his near Relation, at his firſt coming to the Seal, to be beſtowed in Furniture; but thinks this was before any Suit began: And as to the Diamond Ring, he received of him, while his Cauſe was depending, charged to be worth 5 or 600*l.* it was not of near that Value; though he confeſſed, it was too much for a New-Year's-Gift.

20. He confeſſed his receiving of 100 *l.* of Mr. *Peacock*, at his coming to the Seal, as a Preſent; and that he afterwards borrowed 1000*l.* of him, at twice; for which, he ſaid, he would take no Security or Intereſt, and gave him his own Time for repaying it.

21. He confeſſed his Servant *Hunt* did receive 200*l.* of *Smithwick*; but that he ordered it to be repaid.

22. That he did receive of Sir *Henry Ruſwell* 3 or 400*l.* about a Month after the Cauſe was decreed; in which Decree he was aſſiſted by two of the Judges.

23. He confeſſed he received of Mr. *Barker* the 700 *l.* mentioned in this Article, ſome time after the Decree paſſed.

As to the 24th, 25th, and 26th Articles, he confeſſed he received the ſeveral Sums therein mentioned, (viz.) Of the *Grocers* 200 *l.* of the *Apothecaries*, that ſtood with the *Grocers*, a Taſter of Gold, worth 4 or 500 *l.* and a Preſent of Ambergreaſe, and of a new Company of *Apothecaries*, that ſtood againſt the *Grocers*, 100 *l.* But this was no judicial Buſineſs, he obſerved, only a Compoſition between the Parties; and he thought, as they all received Benefit by it, and were all three Common Purſes, there was no great Matter in receiving what they voluntarily preſented.

As to the 27th Article, in which he is charged with taking of the *French* Merchants 1000*l.* to conſtrain the Company of Vintners to take 1500 Tuns of their Wine, with threatning and impriſoning the Vintners, becauſe they would not take their Wines at higher Prices than they were vendible; he confeſſed, Sir *Thomas Smith* did deal with him in Behalf of the *French* Company; informing him, that the Vintners, by Combination, refuſed to take their Wines at any reaſonable Prices; and that this would deſtroy their Trade, which the State was concerned in; and that the Company would gratify him with 1000 *l.* for the Trouble he ſhould take in it. He did, he confeſſed, thereupon endeavour to compromiſe Matters between them, and prevent a Suit, propounding ſuch a Price as the Vintners might gain 6 *l.* a Tun: And the King afterwards recommending the Buſineſs to him, as a Matter that concerned his Cuſtoms, he dealt the more peremptorily in it, and did, for a Day or two, reſtrain ſome of thoſe that were the moſt ſtiff in a Meſſenger's Hands; and afterwards the Merchants preſented him with 1000 *l.*

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To the 28th Article, That he had given way to the Exactions of his Servants, in reſpect of private Seals and Injunctions, he confeſſed it to be a great Fault, that he had looked no better to his Servants.

He confeſſes a great deal of Corruption.

And now he again confeſſed, That, in the Points charged upon him, though they ſhould be taken as he had repreſented them, there was a great deal of Corruption and Neglect, for which he was heartily ſorry, and ſubmitted himſelf to the Mercy of the Court.

He deſired that their Lordſhips would look with Compaſſion on his Perſon and Eſtate, and conſider he was never eſteemed an avaricious Man: That there were few or none of theſe Particulars that were of leſs than two Years ſtanding; from whence he inſinuated, that he had reformed theſe Practices, inſtead of increaſing his Corruptions; and his Eſtate was ſo inconſiderable, that his chief Care was, how he ſhould be able to pay his Debts.

Concluding with his humble Suit, that their Sentence might be mixed with Mercy; and that they would be Interceſſors for him to his Majeſty for his Grace and Favour.

Signs his Confeſſion.

Signed, *Your Lordſhips*
Humble Servant and Supplicant,
Franc. St. Albans, *Canc.*

A Committee of Lords was hereupon ſent to the Lord Chancellor, to acquaint him that they conceived this to be an ingenious and full Confeſſion, and to demand Whether that was his Hand to it, and if he would abide by it. To whom the Lord Chancellor anſwered, *My Lords, It is my Act, my Hand, my Heart: I beſeech your Lordſhips to be merciful to a broken Reed.*

The Seal taken from him.

Which Anſwer being reported to the Houſe, they moved his Majeſty to ſequeſter the Seal; and the King thereupon gave it to the Lord Chief Juſtice Sir *Robert Hutton*, on the firſt of *May*.

He is ſummon'd to appear.

The next Day the Lords commanded the Gentleman-Uſher, and Serjeant at Arms, of that Houſe, to ſummon the late Lord Chancellor to appear in Perſon before their Lordſhips by Nine the next Morning; and that the Serjeant ſhould ſhew his Mace to his Lordſhip at the Time of the Summons; which was done accordingly: But they found him ſick in Bed; and he proteſted his Illneſs was not feigned, and that if he had been well, he would willingly have come.

Pleads Sickneſs.

On *Thurſday*, the third of *May*, the Lords ſent a Meſſage to the Commons, importing, that they were ready to give Judgment againſt the Lord Viſcount *St. Albans:* Whereupon the Commons came up, and their Speaker ſaid, " The Knights, Citizens, and Bur-
" geſſes of the Commons Houſe having made
" Complaint to your Lordſhips of many ex-
" orbitant Offences of Bribery and Corrup-
" tion committed by the late Lord Chancel-
" lor,

The Commons demand Judgment againſt him.

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" lor, in their Name I do humbly pray and " demand Judgment againſt him, as the " Nature of his Offence and Demerits do " require."

The Lord Chief Juſtice (to whom the Cuſtody of the Seal was now committed) anſwered, that That High Court had found the Lord Viſcount *St. Albans* guilty of the Crimes and Corruptions complained of by the Commons, and of Sundry other Crimes and Corruptions of the like Nature; and that, he having excuſed his Attendance on account of Sickneſs, they did nevertheleſs proceed to

His Sentence. Judgment; and that High Court did adjudge, *That the Lord Viſcount* St. Albans, *late Lord Chancellor of* England, *ſhould pay a Fine of forty thouſand Pounds; be impriſoned in the* Tower *during the King's Pleaſure, and be for ever incapable of any Office, Place, or Employment, in the Eſtate or Common-wealth; and that he ſhould never ſit in Parliament, or come within the Verge of the Court.*

He is ſet at Liberty, and allow'd a Penſion. The King ſome Time after releaſed his Lordſhip out of the *Tower*, and ſettled a ſmall Penſion on him; and he reſided, for the moſt part, at his Chambers in *Gray's-Inn*. He

His Death. died the ſixth of *April*, 1626, in the ſixty-ſixth Year of his Age, at the Lord *Arundel*'s Houſe at *High-gate*, near *London*; where he had been about a Week upon a Viſit. His Diſtemper was a ſlow Fever, attended by a violent Cold, and a Defluxion of Rheum upon his Breaſt, which was ſo great that it ſuffocated him.

Buried at St. Albans. He was buried at St. *Michael*'s Church in *St. Albans*, in purſuance of his Will, and had a Monument of white Marble erected there, by Sir *Thomas Meautys*, once his Lordſhip's Secretary; the Inſcription being compoſed by the celebrated Sir *Henry Wotton*. He left neither Wife or Child, and conſequently his Titles, of Lord *Verulam*, and Viſcount of *St. Albans*, expired with him.

Remarks on Lord Bacon's *Trial.* Theſe Proceedings againſt the Lord Chancellor *Bacon* may not be thought perfectly regular at this Day perhaps; for here the Commons exhibit only a verbal general Charge againſt him, for Bribery and Corruption; giving two or three Inſtances of it, and leaving the Lords to ſpecify the reſt. No particular Articles were exhibited in Writing, or indeed any thing in Writing, by the Commons; and for ought appears, that Charge (ſuch as it was) was delivered at a Conference between the two Houſes, and not at the Bar of the Houſe of Lords: Nor was it ſo much as ſtiled *An Impeachment*, though the Editor of this ſecond Collection of Trials calls it ſo.

The Lords, we find, drew up the Charge *in Writing* themſelves, and added abundance of Inſtances of Bribery that the Commons never mentioned; and gave Judgment on the Whole, though regularly, Judges can take Notice of no more than what the Criminal is charged with by the Proſecutor. Where a Perſon is impeached, or indicted, for two or three Miſdemeanors, and his Judges know of twenty more, they are not to try and ſentence him for more than the Proſecutors charged him with. But here the Lords ſeem to have taken upon them to be both Proſecutors, and Judges in a great meaſure, which is not exactly agreeable to the Rules of Juſtice. However, as the Commons acquieſced, or rather concurred in this Method of Proceeding, it was in vain to complain, for they could ſoon have converted their Charge into a formal Impeachment, where there appeared ſuch abundant Evidence againſt his Lordſhip. Whether it be conformable to the Rules of Juſtice alſo, to condemn a Perſon in his Abſence, if that Abſence be really occaſioned by Sickneſs, is another Point that deſerves Conſideration: But perhaps the two Houſes might not imagine, they were tied up by ſuch Rules as other Courts are indiſpenſibly obliged to obſerve: And it muſt be admitted, when they act in their Legiſlative Capacity, they are not. But whether, in other Caſes, the Laws of the Kingdom ought not to be obſerved by the Houſe of Peers, as well as by inferior Courts, I perceive ſome are apt to queſtion.

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But, notwithſtanding theſe numerous Inſtances of Bribery and Extortion, I find there are ſome Gentlemen, at this Day, that cannot bring themſelves to believe, that a Perſon of my Lord *Bacon*'s fine Sentiments could be guilty of theſe ſordid Crimes. They aſcribe all to his Servants, and to the Malice of his Enemies, who fixed the Faults of his Dependance upon him. But, when we ſee his Lordſhip firſt making a general Confeſſion of the Charge, and then acknowledging his Guilt in many particular Inſtances, what Room is there to ſuppoſe him innocent?

My Lord endeavours to extenuate his Guilt, by obſerving, that he was never eſteemed a covetous Man, nor had acquired a great Eſtate: And perhaps his principal Errors were a bad Œconomy, and a Generoſity that bordered on Profuſeneſs, which brought him under Difficulties; and then poſſibly he liſtened to his Servants and Dependants, who were already retained in almoſt every Cauſe, and repreſented to their Maſter, no doubt, how eaſily he might extricate himſelf, by accepting Preſents from the Suitors; and when they had once prevailed on their Lord to pay his Debts, *and traffick with Orders and Decrees*, they continued their own Extortions without Reſtraint. They had him now in their Power, and he was under a Neceſſity of conniving at whatever they did; and perhaps he frequently perverted Juſtice for fear of provoking theſe inſatiable Wretches, to make a Diſcovery. What he gained himſelf might be a Trifle to what they pillaged the unhappy Suitors of.

It has been frequently obſerved of great Wits, that, though they give excellent Rules to others, their own Œconomy is the worſt in the World. They ſeem to think it beneath them to attend to the Parts of low Life; to deſpiſe the keeping Accounts, and calculating whether their Revenues will ſupport their Expences. They cannot ſee an Object of Compaſſion perhaps without relieving him, or deny a Share in their Purſe to a Perſon that pretends to be in Diſtreſs; not conſidering, that the beſt Fortune muſt ſoon be exhauſted, where they have not Reſolution enough to reſiſt the Importunities of every idle neceſſitous Supplicant.

They

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They do not reflect, that when they have brought Difficulties upon themſelves, by ſquandring away their Fortunes, with a laviſh undiſtinguiſhing Hand, what a Teſt their Virtue may be put to, to ſupply their Neceſſities: That, when hungry Creditors ſtand ready to expoſe and devour them, it will be difficult to reſiſt any Opportunities of furniſhing themſelves with Money, how infamous ſoever.

That Species of Covetouſneſs which induces a Man to wrong others, in order to hoard up Treaſure, with which he might do a great deal of Good in the World, ought certainly to be deteſted; but I queſtion if, he who is guilty of Extortion and Oppreſſion, to ſupply his own Extravagancies, or the Defects of his Œconomy, be not the more to be dreaded of the Two. For the Miſer, as we ſtile him, is generally timerous and cautious how he expoſes himſelf to be called to an Account; while the vain, luxurious Prodigal is frequently obliged to venture upon any Meaſures, how criminal or deſperate ſoever, to preſerve him from preſent Deſtruction. Nothing, therefore, is more to be dreaded, than the filling our Courts of Juſtice with indigent and extravagant Men, who are under a kind of Neceſſity of ſelling and making Merchandize of the Suitors, in order to ſupport their own profuſe Way of Living.

It was an excellent Obſervation, *That a Man ought to be juſt, before he is generous.* He ought not to beſtow that Part of his Fortune upon others, that ſhould be applied to the Payment of his Debts; much leſs ſhould he accept Bribes to pervert Juſtice, and ruin Families, to enable him to be generous to others. Such Sort of Generoſity is worſe than Robbery; for it does not only bring Deſtruction on innocent Men, under a Colour of doing them Juſtice, but, for a trifling Sum the Judge takes, probably the Suitor loſes ten times as much; whereas a Highwayman only takes what a Man has about him; we expect no Juſtice or Compaſſion from him, and he deprives us of no more than what he himſelf makes uſe of.

But what makes an unjuſt Judge ſtill to be more dreaded than a Robber, is, that after he has ruined a Family, he ſometimes finds himſelf under a Neceſſity of perſecuting and torturing the injured Suitor, in order to conceal his own Wickedneſs, as in the preceding Caſe, of *Wraynham*; where this very Lord Chancellor took a Bribe of 100 *l.* of his Adverſary *Fiſher*, to give the Cauſe againſt him; whereby *Wraynham* and his Family were not only ruined, but when he complained of the Injuſtice, the Injury was doubled by a Proſecution in the *Star-Chamber*, where his Lordſhip was Preſident, and procured him to be fined and impriſoned, inſtead of relieving him; and we ſee the unfortunate *Wraynham* crying out, in the Anguiſh of his Soul, when he found he was like to be cenſured by that Court, *My Lands are taken away, which were decreed me by a former Lord Chancellor; I ſee a Priſon gaping for me, in which I muſt from henceforth ſpend all the Days of my Life; for I have laid out three thouſand Pounds in this Suit: My Wife and Children muſt ſtarve, and my Friends, that ſtand engaged for me, are undone.* And all theſe Misfortunes brought upon him by a Bribe of 100 *l.* or a very little more, for ought appeared; and now he was to be puniſhed, by the Influence of his Oppreſſor, for complaining of the Injuſtice that had been done him. In his own Words, *Oppreſſion was palliated and defended by Greatneſs, Wit, and Eloquence: He that had done him this Injury, was forced to add Falſhood and Cruelty to it, to prevent the Diſcovery, which was worſe than Murder, for his Lordſhip had devoured him and his Family.* Such was the curſed Effects of his Lordſhip's taking one ſingle Bribe in this Cauſe, and very probably the Conſequences were as deſtructive in many more; and yet with what extreme Tenderneſs did the Parliament proceed againſt this illuſtrious Oppreſſor; it was long, very long, before they would give any Attention to the unfortunate injured Suitors; and, as has been already obſerved, ſome were puniſhed but for complaining of him, when his Corruption was ſo manifeſt, that his Servants were known to eſpouſe one Side or other, in almoſt every Cauſe.

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Such were the fine Talents, the inimitable Accompliſhments of the Lord *Bacon*, that all the World ſeem to have been prejudiced in his Favour; and it has been looked upon as a memorable Inſtance of the Humanity of the *Engliſh*, that they expreſſed ſo much Compaſſion towards him in his Fall: The Commons, though his Oppreſſions cried ſo loud that they could not avoid proſecuting him, would not impeach him formally, or draw up any Articles againſt him; but left the ungrateful Task entirely to the Lords.

His Peers, to deliver him from that Confuſion that muſt naturally have attended his Appearance before them, were pleaſed to diſpenſe with it, and gently cenſured him, in his Abſence. His Sentence muſt be acknowledged exceeding mild, if we reflect on his complicated Crimes. The Brightneſs of his Parts, and his exalted Station, were certainly ſo far from extenuating his Guilt, that they were in reality a very great Aggravation of it: This Backwardneſs, therefore, of the Commons, in proſecuting, and the Lords in puniſhing, this unrighteous Judge, muſt ſurely be looked upon, rather as the Effect of Weakneſs, than an Inſtance of the Virtue, of the *Engliſh* Nation.

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Sir Thomas Darnel's *Case.*

Proceedings on the Writs of *Habeas Corpus*, brought by Sir THOMAS DARNEL, Sir JOHN CORBET, Sir WALTER EARL, Sir JOHN HEVENINGHAM, and Sir EDMUND HAMPDEN, *Nov.* 1627. 3 *Car.* I.

1627. 3. Car. I.

HIS Majeſty being engaged in War, both with *France* and *Spain*, and having been refuſed Supplies, by his two firſt Parliaments, aſſembled in the Years 1625, and 1626. had Recourſe to that extraordinary Way, of raiſing Money by Way of Loan: And Letters were ſent to the Lords Lieutenants of the reſpective Counties, to return the Names of ſuch Perſons as were of Ability, and what Sums they might be ſuppoſed to ſpare: After which, Letters were iſſued, under the Privy Seal, requiring the Loan of ſuch Sums, as had been ſpecified in the Return of the Lords Lieutenants. Of ſome were demanded ten, of others fifteen Pounds; and ſcarce more than twenty Pounds, of any one Perſon. Collectors were employed to receive the reſpective Sums, or procure Subſcriptions for them; and thoſe who refuſed, either to pay, or ſubſcribe, what they were aſſeſſed at, were bound by Recognizance to appear at the Council Board. If they were Gentlemen of Fortune, and in caſe of their perſiſting to refuſe the Loan before the Council, they were committed to Priſon: Among theſe were Sir *Thomas Darnel*, and the other four Gentlemen above named; who ſeverally ſued out Writs of *Habeas Corpus*, to be admitted to Bail; and, firſt, Sir *Thomas Darnel*, who was impriſoned in the *Fleet*, brought his Writ of *Habeas Corpus*, returnable the 8th of *November*, and afterwards an *Alias Habeas Corpus*, returnable the 15th of *November:* By virtue whereof, the Warden of the *Fleet* brought Sir *Thomas Darnel* into the Court of *King's Bench*, and made the following Return:

A Loan required of the Subject.

Sir Thomas *committed by the Council, for refuſing to lend.*

Brings his Writ of Habeas Corpus.

Executio iſtius brevis patet in quadam ſchedula annexat huic brevi:

Return of the Habeas Corpus.

Ego, Henricus Liloe, Miles, Gardianus Priſone Domini Regis de le Fleet, *ſereniſſimo Domino Regi certifico, quod dict'* Thomas Darnel *Baronet' detentus eſt in Priſona predict' ſub cuſtodia mea virtute cujuſdam Warranti duorum de privato Conſilio mihi directi cujus tenor ſequitur in his Verbis*, viz.

Whereas heretofore the Body of Sir *Thomas Darnel* hath been committed to your Cuſtody, theſe are to require you, ſtill to continue him; and to let you know, that he was, and is committed by the ſpecial Command of his Majeſty. *Et hæc eſt cauſa detentionis predict'* Thomæ Darnel.

The Caſe of the other four Priſoners, the ſame.

The Caſe of Sir *John Corbet* Baronet, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden* Knights, was exactly the ſame with that of Sir *Thomas Darnel:* And they alſo were brought into Court, on their ſeveral Writs of *Habeas Corpus*, on Thurſday, the 22d of *November*.

Bramſton's *Argument for Sir* John Heveningham.

Serjeant *Bramſton*, on the Behalf of Sir *John Heveningham*, moved, that he might be bailed, taking Exceptions, as well to the Matter and Subſtance of the Return, as to the Manner and legal Form thereof.

Exceptions to the Return.

The Exceptions he took to the Matter, were, That, the Return was too general, there being no ſufficient Cauſe ſhewn, of the Commitment of the Priſoner: And, as it was inſufficient for the Cauſe, ſo alſo in the Time of the firſt Impriſonment; for though there appeared a Time upon the ſecond Warrant from the Lords of the Council, to detain him ſtill in Priſon; yet by the Return, no Time appeared when he was firſt impriſoned, which was neceſſary to be ſhewn; and if that Time appeared not, there was no Cauſe to remand him, and conſequently he was to be delivered.

And as to the Cauſe of his Impriſonment, which was ſaid to be *per ſpeciale mandatum Domini Regis*, this was too general, and uncertain; for that it was not manifeſt, what kind of Command that was.

Nor was the Form of the Return, as it ought to be, fully and poſitively the Return of the Keeper himſelf only, but came in with a *ſignificat* or *prout*, that, he was committed *per ſpeciale mandatum Domini Regis.*

That it was not good in Subſtance; becauſe there was no Cauſe of the Impriſonment ſhewn. The Writ of *Habeas Corpus* was the only Means the Subject had to obtain his Liberty; and the End of the Writ was, to return the Cauſe of the Impriſonment, that it might be examined in that Court, whether the Parties ought to be diſcharged, or not. In this Return there was no Cauſe at all appeared of the firſt Commitment, and therefore there could be no Cauſe for the Court to remand him: But there was Cauſe to deliver him, ſince the Writ required the Keeper to bring the Body, *and the Cauſe* of his Impriſonment, before the Court.

This was the End of the Writ: and this could not appear to the Court, unleſs the time of the firſt Impriſonment was expreſſed in the Return. By a latter Warrant from the Lords of the Council indeed, for continuing him in Priſon, there is a Time expreſſed: But if this was a good Cauſe, to remand theſe Gentlemen to Priſon, they might be perpetually impriſoned; for if they ſued out Writs of *Habeas Corpus*, it was but making a new Warrant, and they ſhould be remanded, and never have the Advantage of the Laws, which were the beſt Inheritance of the Subject.

Here the Serjeant cited ſeveral Precedents, where Priſoners had been bailed, that were committed *per mandatum Domini Regis*, without Cauſe of their Impriſonment ſhewn.

After citing theſe Precedents, the Serjeant concluded, that, ſince there was not ſufficient Cauſe of the Impriſonment expreſſed in the Return, his humble Suit was, that his Client, Sir *John Heveningham*, who had petitioned his Majeſty, that he might have the Benefit of the Law, (and his Majeſty had ſignifyed it to be his Pleaſure, that Juſtice, according to Law,

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Law, ſhould be adminiſtred to all, and eſpecially to theſe Gentlemen) might be delivered from his Impriſonment.

Mr. Noy's *Argument for bailing Sir* Walter Earl.

Mr. *Noy* being aſſigned Counſel for Sir *Walter Earl*, before he entered upon his Argument, for a Foundation of his Diſcourſe, read the *Writ* of *Habeas Corpus*, which runs thus:

Carolus, *Dei Gratia*, &c. Johanni Liloe *Milit' Gardian' Priſon' noſtræ de le* Fleet *ſalut' Præcipimus tibi quod corpus* Walteri Earl *Milit' in priſona noſtra ſub cuſtodia tua detent' ut dicit' una cum cauſa detentionis ſuæ quocumque nomine predict'* Walter' *cenſeat in eadem Habeas Corpus ad ſubjiciendum & recipiendum ea quæ Curia noſtra de eo ad tunc & ibidem ordin' conting' in hac parte.*

Et hæc nullatenus omit' periculo incumbend' & habeas ibi hoc breve, Teſte Hyde, *apud* Weſtm. *quarto die* Novembris, *Anno*, &c.

He alſo read the Return; but this being of the ſame Tenor as the former Return, there is no Neceſſity of repeating it.

Then Mr. *Noy* obſerved, that the Writ of *Habeas Corpus* contained a Command to the Warden of the *Fleet*, *quod Habeas Corpus* Walteri Earl *coram nobis ad Subjiciend' & recipiend' ea quæ Curia noſtra de eo*, &c. *Ordin' & Conting'* And the Warden having made the like Return as was made on the Return of Sir *Thomas Darnel*'s *Habeas Corpus*, he deſired he might be bailed, if there was no other Cauſe of his Impriſonment; for if there had been a Cauſe certified, and that Cauſe had not been ſufficient to detain him ſtill in Priſon, the Court would have bailed him; and if a Man ſhould be in a worſe Caſe, when there was no Cauſe certified, it would be very hard.

He conceived, that though there was a Signification of the King's Pleaſure to have this Gentleman impriſoned, yet when the King afterwards granted this Writ of *Habeas Corpus*, to bring the Priſoner hither, *ad ſubjiciendum*, to ſubmit himſelf to Puniſhment if he had deſerved it, or, *ad recipiendum*, to receive his Enlargement and be delivered, if there was no Cauſe of his Impriſonment; ſince there appeared no Cauſe of his Impriſonment upon the Return, he ought to be diſcharged.

He made the ſame Objection to the Return alſo that the Serjeant had made, (*viz.*) That the Warden could not certify what was done by another: He muſt inform the Court of the immediate Act done, and not that ſuch Things were told him, or were ſignified to him, as he had done in this Caſe, which rendered the Return inſufficient in the Form.

That, whereas the Statute of *Magna Charta* 29. ſays, *Nullus liber homo capietur vel impriſonetur*, &c. *nec ſuper eum mittimus, niſi per legale judicium parium ſuorum vel per legem terræ*, the Words *in carcerem* are omitted out of the printed Books, it ſhould have been *nec eum in carcerem mittimus*; that the Words *legem terræ* are underſtood in ſeveral ſubſequent Acts of Parliament, to ſignify the Proceſs of Law, ſometimes by Writ, ſometimes by Attachment of the Perſon, and not *ſpeciale mandatum Domini Regis*, as appeared by two Petitions of the Commons, and the King's Anſwer, in 36 *Edward* III. N°. 9. and N°. 20.

In the firſt of them the Commons complained, That the great Charter, the Charter of the Foreſt, and, other Statutes, were broken, and deſire his Highneſs, for the good of himſelf and his People, they might be kept, and put in execution, and that they might not be infringed, by making an Arreſt by ſpecial Command, or otherwiſe: And the Anſwer was, That the ſaid Charter and other Statutes ſhould be put in Execution according to the Petition; that is, without any Diſturbance by Arreſt, by ſpecial Command, or otherwiſe: In the ſame Year they complained again, that Men were impriſoned by ſpecial Command, and without Indictment, or other legal Courſe; and deſired that Men might not be arreſted by ſpecial Command, againſt the Great Charter. To which the King anſwered, that he was well pleaſed therewith; and afterwards, that if any Man was grieved, he ſhould complain, and Right ſhould be done to him. And by the 37th of *Edw.* III. cap. 18. which was a Commentary upon *Magna Charta*, it was enacted, that Men ſhould not be committed upon Suggeſtion made to the King, without due Proceſs of Law; and ſo it was enacted twice in one Year.

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Huſſey, Chief Juſtice, ſaith, that Sir *John Markham* told King *Edward* IV. that he could not arreſt a Man upon Suſpicion of Felony or Treaſon, as any of his Subjects might; becauſe if he ſhould wrong a Man by ſuch Arreſt, the Parties could have no Remedy againſt him.

The Statute of *Weſtm.* 1. indeed, ſays, That Men ſhould not be repleviſable in theſe four Caſes, *viz.* where they are committed for the Death of a Man; or by the Commandment of the King, or of his Juſtices, or of the Foreſt. This Statute, he held, regarded only the Writ *de homine replegiando*, and the Sheriffs and inferior Officers, and not the ſuperior Courts; for it appeared by the Books, that where a Man was brought into the Court of *King's-Bench*, by *Habeas Corpus*, as in the 21 *Edw.* 4. 7. *Winckfield* was bailed here: And if the Statute was expounded otherwiſe, there could be no bailing of Men outlawed, or breakers of Priſons; for they were not within this Statute; and yet this Court bailed them at Pleaſure. It was evident, from the Preamble and whole Tenor of that Act, That it extended only to Sheriffs, Goalers, and other Keepers of Priſons, to direct them in what Caſes they ſhould let Men to Bail, and in what Caſes not; but did not extend to the Judges of the ſuperior Courts. He concluded, that theſe Gentlemen were brought into Court by Writ *ad ſubjiciendum*, if they were charged; and *ad recipiendum* if they were not charged: Therefore, in regard there was no charge againſt them, whereupon they could be detained in Priſon any longer, he deſired his Client might be bailed, or diſcharged with the reſt.

Mr. Selden's *Argument for Sir* Edmund Hampden.

Mr. *Selden*, being aſſigned Counſel for Sir *Edmund Hampden*, moved alſo, that his Client might be bailed, there appearing no Cauſe, in the Return of the *Habeas Corpus*, why he ſhould be reſtrained of his Liberty: And, beſides the Arguments uſed by the former Counſel, he urged, That the Return was contradictory; for one Part of it ſaid, that his Client

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was detained by the ſpecial Command of the King, and the other, that the Lords of the Council willed and required the Warden ſtill to detain this Gentleman, and that this Contradiction made the Return void.

And as to the Matter, he conceived no Man could be impriſoned, either by the King or the Privy-Council, without Cauſe expreſſed: That by the Words, *per legem terræ*, in *Magna Charta*, muſt be intended a due Courſe of Law, either by Preſentment or Indictment; for if the Words *per ſpeciale Mandatum &c.* were within the Meaning of thoſe Words *per legem terræ*, (or according to Law) then the Statute had done nothing: That the Words, *per legem terræ*, muſt be interpreted here, as in 42 *Eliz.* where a Bill was brought in, reciting, that divers Perſons, without any Writ or Preſentment, were caſt into Priſon; and deſiring it might be enacted, That it ſhould not be ſo done hereafter. The Anſwer was that this was an Article of the Great Charter, and ſhould be granted: So that it appeared, that Statute was not taken to be an Explanation of *Magna Charta*, but the very Words of the Statute of *Magna Charta*. He concluded that ſince there were ſo many Reaſons, ſo many Precedents, and ſo many Statutes, which declare, that no Freeman ought to be impriſoned, but according to the Laws of the Land, and that the Liberty of the Subject was the higheſt Inheritance he had, his Client might be bailed.

Mr. Calthrop's Argument for Sir John Corbet.

Mr. *Calthrop*, who was aſſigned Counſel for Sir *John Corbet* moved alſo that his Client might be bailed, becauſe the Return of the *Habeas Corpus* was inſufficient, both in the Matter and the Manner, of the Return. As to the Manner he obſerved, as the reſt of the Counſel had done, that it was ſaid in the Return, that Sir *John Corbet* was detained in Priſon by the ſpecial Command of the King ſignified, by the Warrant of the Lords of the Council; which was not a direct Affirmation that he was detained by the ſpecial Command of the King; but that the Lords of the Council had *ſignified* by their Warrant, that he was committed, and ſtill detained, by the ſpecial Command of the King: Therefore, as a Return ought to be certain, punctual, and affirmative, and not by way of Information out of another Man's Mouth, this Return could not be good.

As to the Matter of the Return, he obſerved, it reſted on theſe three Points: 1. Whether the Return, that he was detained in Priſon by the ſpecial Command of the King, was good, or not, without ſhewing the Nature of the Command, or the Cauſe whereupon the Commitment was grounded? 2. Whether the Time of the firſt Commitment by the Command of the King, not appearing to the Court, was ſufficient to detain him? 3. Whether the Impriſonment of the Subject, without Cauſe ſhew'd, but only *by the Command of the King*, was warrantable?

That the Commands of the King were of ſeveral Natures: As to the verbal Command of the King, he held it was not ſufficient, either to impriſon a Man, or to continue him in Priſon: That it had been reſolved by the whole Court, that if the King commanded one Man to arreſt another, and the Party commanded did arreſt the other, an Action of Treſpaſs or falſe Impriſonment was maintainable againſt the Party that arreſted him, although it were done in the King's Preſence, 16 *Hen.* VI. *Monſtrans de droit.*

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37 *Hen.* VI. 10. If the King give me a Thing, and I take it, by his Command by Word of Mouth, it is not juſtified by Law. Nothing paſſes from the Crown without Matter of Record, 10 *Hen.* VII. 7, & 17, 18. Juſtices may command one to arreſt another in their View or Preſence, but not one out of their View.

2. There is a Command of the King, by his Commiſſion; but it was reſolved in 42 *Aſſ. pl.* 5. that a Commiſſion to take a Man's Goods, or impriſon his Body, without Indictment or Suit of the Party, or other due Proceſs, was againſt Law.

3. There is a Command of the King, grounded on a Suggeſtion made to the King or his Council; but if a Man is committed to Priſon on ſuch Suggeſtion, by Command of the King, it is unlawful. 25 *Edw.* III. *cap.* 4. it is eſtabliſhed, that from thenceforth none ſhall be taken by Petition or Suggeſtion made to the King, or his Council; or otherwiſe, than by Preſentment or Indictment, or by Proceſs made by Writ original at the Common Law: And to the ſame Effect is the 37 *Edw.* III. *cap.* 10.

4. There is a Command of the King, under his Hand by his Signet; and it appears that this is not ſufficient to ſet a Man at Liberty; and much leſs to impriſon him.

5. There is a Command of the King, by Writ under the Great Seal, or the Seal of the Court out of which it iſſueth, which is legal and warrantable; and yet even here the Party is bailable. And in the Regiſter he obſerved, this Writ was expounded to be *ſpeciale mandatum domini Regis*: Therefore when the Return is made, that he is impriſoned, and detained in Priſon by the ſpecial Command of the King, how could the Court adjudge, upon this Return, whether he ought to be kept in Priſon, and not be bailed; when the Nature of the ſpecial Command is not ſet forth in the Return, whereby it might appear to the Court, whether he was bailable?

As to the general Return of *ſpeciale mandatum domini Regis*, without ſhewing Cauſe; the Command of the *Habeas Corpus*, being to ſhew the Cauſe of his detaining in Priſon, as well as to bring his Body into Court, the Keeper did not give a full Anſwer to the Writ, unleſs the Cauſe of the Detainment in Priſon was returned. The Court could not know how to give their Judgment upon him, either for his Impriſonment, or for his Diſcharge, according to the Purport of the Writ, when there was not any Cauſe returned.

As the Court of *King's-Bench*, and Judges, ought not to deny an *Habeas Corpus*, to any Priſoner that demands it, by whomſoever committed; ſo ought the Cauſe of his Impriſonment to be ſhewn on the Return, that the Court may adjudge of the Cauſe, whether it be lawful or not.

Then he proceeded to cite Precedents, where the Parties were committed by the Command of the King, or the Privy-Council; admitting

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mitting, that ſuch Acts, as were done by the Privy-Council, might properly be ſaid to be done by the King himſelf; and in all theſe Caſes he ſaid it would appear, there was a Cauſe returned, as well as a *ſpeciale mandatum domini Regis, &c.* or *mandatum Privati Conſilii domini Regis.* And after the reciting of the ſaid Precedents, he concluded, That the Return, that Sir *John Corbet* was committed and detained in Priſon, *per ſpeciale mandatum domini Regis*, without ſhewing the Nature of the Command, and the Cauſe upon which the Command of the King was grounded, was not good; and therefore deſired his Client Sir *John Corbet* might be diſcharged.

Whereupon the Chief Juſtice demanded, if Mr. Attorney would take another Day to anſwer their Arguments; and the Attorney deſiring that *Monday*, the 26th of *November*, might be appointed for hearing him, the Counſel for the Priſoners were ordered to attend the Judges and Mr. Attorney, with the Precedents and unprinted Statutes they had mentioned, in the mean time.

Mr. Attorney's Anſwer to the preceding Arguments.

On *Monday* the 26th of *November*, 1627, Sir *John Corbet*, and the reſt of the Priſoners, being brought into Court again, Mr. Attorney obſerved, that their Counſel had divided their Objections into two main Points; the one *the Form*, the other *the Matter*; and to the Form, had objected four ſeveral Things.

1. That the Return was not poſitive, but referred to the Signification made by another, as the Lords of the Council. 2. That the Keepers of the Priſons had not returned the Cauſe of the Commitment, but the Cauſe of the Cauſe, which was not good. 3. That the Return was imperfect; for that it ſhew'd only the Cauſe of the detaining in Priſon, and not the Cauſe of the firſt Commitment. 4. And laſtly, That the Return was contradictory; for that in the firſt Part there was a Certification that the detaining theſe Gentlemen in Priſon was *per ſpeciale mandatum domini Regis*, and when the Warrant of the Lords of the Council was ſhewed, it appeared that the Commitment was by the Lords of the Council.

As to the firſt Objection, Mr. Attorney ſaid he did agree, that if the Return was not poſitive, it was not good. But it appeared that the firſt Words of the Return were poſitive and affirmative: The Words were, *Quod detentus eſt ſub cuſtodia mea per ſpeciale mandatum domini Regis.* The Words *mihi ſignificavit* followed, and were not Part of the Affirmation made before it. There was a poſitive Return, that the Detaining was by the Command of the King; and the reſt of the Return was only for the Satisfaction of the Court.

To the ſecond Objection, that the Warden had returned the Cauſe of the Cauſe, and not the Cauſe itſelf, in which alſo they were miſtaken; for the Return was affirmative, *Ego Johannes Liloe certifico, &c.* the other was but the Council's Warrant for him that made the Return.

3. To the third Objection, that the Return ſhewed only the Cauſe of *detaining* in Priſon, and not the Cauſe of the *firſt* Commitment, he anſwered, that it was ſufficient for the Officer to anſwer the Point commanded, and the Writ mentioned only the Cauſe of the Detaining.

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4. As to the fourth Objection, that the Return was contradictory, for that in the firſt Part it is ſaid they were detained *per ſpeciale mandatum domini Regis*, and afterwards that they were detained by the Lords of the Council; To this he anſwered, that it appeared that the Lords of the Council ſpake not their own Words or Command in that Warrant, but ſay, you are to take Notice of it as the Words and Command of the King. They ſay it was his Majeſty's Pleaſure he ſhould know, that the firſt Commitment, and the preſent detaining him in Priſon, was by his Majeſty's ſpecial Command; from whence he concluded, that the Form of the Return was ſufficient.

As to the Matter of the Return: The great and mighty Reaſon the Counſel for the Priſoners inſiſted upon was, the Inconveniences that might come to the Subjects in their Liberties, if this Return ſhould be good: And he did acknowledge, that the Liberty of the Subject was juſt, and that it was the Inheritance of the Subject; but yet it was their Inheritance *ſecundum legem terræ.*

He obſerved, the Counſel had cited many Caſes to enforce what they advanced; as 1 & 2 *Eliz. Dyer, fo.* 175. That the continuance of a *Capias* ſhall be from Term to Term, without a Term betwixt; becauſe otherwiſe the Defendant may be kept too long in Priſon; and 38 *Aſſ. pl. f.* 22. *Broke, tit. Impriſonment*, 100. that Impriſonment is but to detain the Party till he have made Fine to the King; and therefore the King cannot juſtly detain him in Priſon after the Fine tendered: And 16 *Hen.* VI. *Monſtrans de droit*, If the King command me to arreſt a Man, and thereupon I do arreſt him, he may have an Action of falſe Impriſonment, or of Treſpaſs, againſt me, though it be done in the King's Preſence: And 1 *Hen.* VII. 4. where *Huſſey* is made to ſay, that Sir *John Markham* declared to King *Edward* IV. that he might not arreſt any of his Subjects for Treaſon or Felony; becauſe he might wrong his Subjects by ſuch Arreſts, and they could not have a Remedy againſt him.

To the two firſt Caſes, he anſwered that the Reſtraint in theſe, and moſt of the other Caſes cited, appeared to be in the ordinary Courſe of Judicature, fit for *Weſtminſter-Hall*, and not for the Council-Table, and therefore not applicable to this Caſe: And for the other two Caſes, the Law preſumed the active Part of them not proper for the Majeſty of a King, who ever did thoſe Things by his ſubordinate Officers. The King might commit any Man at his Pleaſure: But the Queſtion here was, Whether, when the King had committed any one, he muſt render a Cauſe of that Commitment?

That the King could not command his Lordſhip, or any other Court of Juſtice, to proceed otherwiſe than according to the Laws of the Kingdom: But there was a great deal of Difference between thoſe legal Commands, and that abſolute *poteſtas*, that a Sovereign has, by

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by which a King commands. He did not mean, he ſaid, by *abſoluta poteſtas*, that it was ſuch a Power, that the King might do what he pleaſed; for he had Rules to govern himſelf by, as well as his Lordſhip, who was a ſubordinate Judge, under him: The Difference was, the King was the Head of the ſame Fountain of Juſtice, which his Lordſhip adminiſtred to all his Subjects. All Juſtice was derived from him; and what he did, he did not as a private Perſon, but as Head of the Commonwealth, as *Juſticiarius Regni*. The very Eſſence of Juſtice, under God, upon Earth, was in him: And ſhould they not ſubmit to his Commands, but make Enquiries, whether they were lawful, and ſay, that the King could not do this or that, in the Courſe of Juſtice? Who ſhould call in queſtion, the Actions, or the Juſtice, of the King, who was not to give any Account for them? As in this Caſe, where he had committed a Subject, and ſhewed no Cauſe for it.

The King often commits, and ſhews no Cauſe: If he does expreſs the Cauſe, indeed, to be either for Suſpicion of Felony, Coining, or the like, the Court might deliver the Priſoner, though it was *per ſpeciale mandatum domini Regis*, becauſe there is no Secret in theſe Caſes; for with the Warrant, he ſends the Cauſe of the Commitment: But if there was no Cauſe expreſſed, that Court always remanded them. It was to be intended, there was Matter of State, and that it was not ripe, or Time for it to appear.

By *Magna Charta* indeed (the Foundation of our Liberties) *None ſhall be impriſoned, but by lawful Judgment of his Peers, or by the Law of the Land.* But did it follow from thence, that no Man could be committed, but he muſt be firſt indicted or preſented? Every Juſtice of Peace, or Conſtable, might commit before Indictment or Preſentment; therefore a Commitment could not be meant by the Words, *per legem terræ*, much leſs a Commitment by the King, who was not anſwerable to the Party, or to any Court of Juſtice, for his Commitments, but to the high Court of Heaven.

Then Mr. Attorney cauſed the Statutes to be read, on which the Counſel on the other Side inſiſted, affirming, that they were not to be underſtood of the firſt Arreſt; but that no Man ſhould be tried, or condemned, but by the Law of the Land: and that, if they were to be underſtood otherwiſe, it was contrary to all Practice, both then, and now in Uſe: that their Buſineſs was to find out the true Meaning of *Magna Charta*, that being the Foundation of their Caſe: All that had been ſaid beſides, was not to the Purpoſe; there was not a Word, either of the Commitment of the King, or Council, in all the Statutes and Records they had cited.

The Queſtion was not, Whether the King, or Council, could commit a Man, and ſhew no Cauſe of his Commitment; but, *Whether the ordinary Courts of Juſtice had Power to bail him, or not?* And he inſiſted, that the Statute of *Weſtm.* 1. was a Direction, in what Caſes Men impriſoned ſhould be bailed. This Statute declared, that in four Caſes Men were not repleviſable, *viz.* thoſe that were impriſoned for the Death of a Man, by the Command of the King, or of his Juſtices, or of the Foreſt. This Statute was made ſoon after that of *Magna Charta*, and was an Expoſition of it; and the Counſel, on the other Side, had not ſhewn one Law, printed or unprinted, that repealed or altered this; or ſhewed that ſuch Men were repleviſable: And as the Law, ſo the conſtant Courſe of Precedents, which were the beſt Expoſitions of the Law, were againſt them. They, on the other Side, could not cite one Book, Statute, or other Thing, to prove, that they that have been committed *per ſpeciale mandatum domini Regis*, were bailable.

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Then Mr. Attorney cited ſeveral Precedents, to ſhew, that Perſons committed by the ſpecial Command of the King, or the Council, were not bailable; and, among the reſt, a Reſolution of the Judges, in Queen *Elizabeth*'s Reign, that a Man committed by the Queen, or the Privy Council, without Cauſe expreſſed, could not be bailed.

He ſaid, there were *Arcani Imperii*, which Subjects were not to pry into. If the King committed a Subject, and expreſſed no Cauſe, it was not to be inferred from thence, there was no Cauſe for his Commitment: The Courſe had always been, to ſay there was no Cauſe expreſſed, and therefore the Matter was not ripe; and thereupon the Courts of Juſtice have always reſted ſatisfied, and would not ſearch into it.

In this Caſe, the King was to be truſted: It was not to be preſumed, he would do any thing, that was not for the Good of the Kingdom. In coining Money, his Power was abſolute: If he would coin Braſs, or Leather, inſtead of Silver, there was no Remedy: The Cinque Ports were free to carry on their Trade; but the King, foreſeeing Danger, might ſhut up the Ports: The King might pardon all Traitors and Felons, and exempt ſo many from Offices and Juries, that their might not be Men enough left to ſerve: But it was not to be ſuppoſed, he would do theſe Things: However, he was intruſted with the Power of doing them; and the Inconvenience would be as great to the Subject, if he did any of them, as his committing Men, without ſhewing Cauſe, might be; and therefore the Arguments drawn from the Inconvenience, that might attend ſuch Commitments, were of no Weight.

Then he proceeded to anſwer their Precedents, and inſiſted, that thoſe they had produced, made more againſt the Priſoners, than for them; but complained, that though they mentioned but eight Precedents in Court, they had ſince brought him ſixteen.

He ſhewed that, in moſt of the Precedents cited by the Council, the Cauſe of the Commitment was expreſſed; or the Parties were committed by the ordinary Courts; or the King ſignified his Pleaſure to the Court, that the Priſoners ſhould be diſcharged, or bailed, before the Court did either. He cited alſo many other Precedents, to ſhew, that this was the general Practice; and prayed, that theſe Gentlemen might be remanded, and left to go the right Way for their Delivery, namely,

by

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by Petition to the King. Whether it was a Petition of Right, or of Grace, he knew not; but he was ſure it muſt be to the King, from whom he perſonally underſtood, that theſe Gentlemen had never yet preſented any Petition to him.

The Judges having appointed the 28th of *November*, to deliver their Opinions in this Matter, the Lord Chief Juſtice *Hyde* ſaid, they had ſeriouſly conſidered what had been offered on either Side; and being come to a Reſolution, the reſt of the Judges had deſired him to deliver the Opinion of the whole Court.

Five Judges deliver their Opinion.

He ſaid, the Statutes of *Magna Charta*, the 25 *Edw.* III. the 36 *Edw.* III. the Statute of *Weſtm.* 1. and the reſt of the Statutes mentioned, were very good Laws, and ſtill in Force; but it was not their Buſineſs, to interpret them now: What was now to be adjudged of by them, was, *Whether one that was committed by the King's Authority, and no Cauſe declared of his Commitment, ought to be delivered by Bail, or remanded back?*

The Exceptions which had been taken, he ſaid, were either to the Form, or to the Subſtance. As to the Form, it was pretended, the Return was not poſitive; but they conceived, it was a poſitive and abſolute Return. The Warden of the *Fleet* had firſt returned poſitively, *that it was done by the King's Direction*; and the Words that followed, were ſurpluſage, as to that Objection, that the Return did not take Notice, why they were taken: It was ſufficient for the Officer to anſwer the Point in Queſtion; and the Writ did not demand the Reaſon why they were taken, but the Cauſe of the Detention, which was ſufficiently anſwered; and therefore they reſolved, that the Form of the Return was good.

As to the Subſtance, or Matter of the Return, the Warden certified, that they were detained in Priſon by *the ſpecial Command of the King*; and the Queſtion was, Whether this Return was good in Law?

They had produced Precedents indeed, to prove that where Men were committed by the King, or the Lords of the Council, and no Cauſe expreſſed, they were delivered; but theſe Precedents proved the direct contrary: Where the Cauſe of the Commitment hath been expreſſed; there the Party hath been delivered by the Court, if the Caſe ſo required: But where there hath been no Cauſe expreſſed, they have ever been remanded; or, if they have been delivered, it was by the Direction of the King, or of the Lords of the Council. After which the Chief Juſtice went through all the Caſes that had been cited, and declared that the whole Court were of Opinion, the Precedents made againſt the Priſoners; but ſeemed to rely on none more than the Reſolution of all the Judges of *England* in 34 *Eliz.* *That if a Man was committed by the Commandment of the King, he was not to be delivered by a* Habeas Corpus *in that Court, for they knew not the Cauſe of his Impriſonment.*

This had been the Practice in the Times of all preceding Kings, as appeared from the Records they had cited; and they muſt walk in the Steps of their Forefathers: The King was truſted in great Matters, though he was bound to act by Law, and he commanded them to proceed by Law; and they made no doubt but if the Priſoners would apply to the King, who knew the Cauſe of their Impriſonment, he would relieve them; but they muſt leave Mercy to him. If in Juſtice they ought to have delivered the Priſoners, they would have done it; but upon thoſe Grounds and Records, on thoſe Precedents and Reſolutions, they could not deliver them, but they muſt be remanded. However, his Majeſty having releaſed all thoſe Gentlemen who were impriſoned for refuſing the Loan, in *January* following, the Nation ſeemed to look upon them as injured Patriots, who had ſuffered in the Cauſe of Liberty; and a Parliament being ſummoned to meet ſoon after, moſt of them were elected, and returned to ſerve as Members in it.

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The Gentlemen who refuſed the Loan elected Members of Parliament.

The Parliament meets.

The Parliament meeting on the 17th of *March* 1627, among other Grievances, this of impriſoning Gentlemen for refuſing the Loan, and not admitting them to Bail, was moved: And it ſeemed determined in the Houſe of Commons, not to grant his Majeſty any Supplies, till this, and the reſt of their Grievances, were redreſſed.

The Commons reſent the Impriſonment of Gentlemen for refuſing the Loan, &c.

Sir *Francis Seymour* opened the Debate on this Subject, and, after ſome Preamble to his Diſcourſe, ſaid, *How can we think of giving Subſidies, till we know whether we have any Thing to give?* If his Majeſty is perſuaded by any, he may take from his Subjects what he will, I would gladly know what we have to give? It was ill for Subjects to give Laws to their Princes, and as ill that Princes ſhould uſe Force with their Laws; that this had been done, appeared by billeting of Soldiers, levying Money againſt Act of Parliament, and by impriſoning divers Gentlemen for the Loan, who, if they had ſubmitted, had been as much in Fault as thoſe that were the Projectors of it; though, to countenance theſe Proceedings, it had been preached (or rather prated) from the Pulpit, that all we have is the King's, *Jure Divino:* They forſook their own Function, and turned ignorant Stateſmen: They were willing to change their Conſcience for a good Biſhoprick: They ſaw how eaſy it was for a Prince, how juſt and good ſoever, to be abuſed, in regard he muſt ſee with other Men's Eyes, and hear with other Men's Ears. He obſerved, that thoſe Princes had been in the greateſt Want and Extremity, that had exacted moſt of their Subjects; moſt unfortunate in the Choice of their Miniſters, and failed moſt in their Undertakings. It was clear that the Reaſon his Majeſty did not ſucceed in his Wars with *France* and *Spain*, was for want of faithful Council: He wiſhed he could ſay ſuch an one had been employed abroad. He confeſſed, he was no good Subject, nor well affected to his Majeſty, that would not freely lay down his Life, for the Service of his Majeſty and the Commonwealth: But, on the contrary, when againſt a Parliament-Law, the Subject ſhall have his Goods taken away, and be deprived of his Liberty, ſhould it be accounted want of Duty to ſtand upon their hereditary Privileges, confirmed by many Acts of Parliament?

Sir Francis Seymour's Speech.

They ſtrike at the Duke of Bucks.

In doing this they ſhould tread in the Steps of their Forefathers, who ever preferred the

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publick Intereſt before their own private Right, nay, before their Lives; nor could it be any wrong to his Majeſty to ſtand upon them, ſince they ſhould thereby be the better enabled to ſerve his Majeſty; but they muſt wrong their Poſterity and their Conſciences, if they ſhould willingly forego what belonged to them, by the Laws of God and of the Land; and this they ſhould do well to preſent to his Majeſty; they had no Cauſe to doubt of his gracious Acceptance of ſuch an Addreſs.

Sir Thomas Wentworth's *Speech.*

Surely, ſaid Sir *Thomas Wentworth*, in the greateſt Humility I ſpeak it, theſe illegal Ways are Puniſhments, and Marks of Indignation: The raiſing Loans, ſtrengthned by Commiſſions, with unheard of Inſtructions and Oaths; the billeting of Soldiers by Lieutenants, and Deputy-Lieutenants, have been as if they could have perſuaded Chriſtian Princes, yea Worlds, that the Right of Empire was to take away by a ſtrong Hand; and they had endeavoured, as far as poſſible, to do it. This had not been done by the King, (under the pleaſing Shade of whoſe Crown, he hoped they ſhould ever gather the Fruits of Juſtice,) but by Projectors, who had extended the Prerogative of the King beyond the juſt Symmetry, which made a ſweet Harmony of the whole: They had brought the Crown into greater Want than ever, by anticipating the Revenues: They had introduced a Privy-Council, raviſhing at once the Spheres of all antient Government; impriſoning the Subject, without either Bail or Bond. He added, they have taken from us what? What ſhall I ſay? Indeed, what have they left us? All Means of ſupplying the King, and ingratiating ourſelves with him, taking up the Root of all Property; and concluded with a Motion to addreſs his Majeſty for four Things: 1. The Freedom of their Perſons from Impriſonment; 2. Not to employ them abroad, contrary to antient Cuſtom; 3. That no Levies be made on their Goods, but by Parliament; and 4. That there might be no billetting of Soldiers.

Sir Benjamin Rudyard's *Speech.*

Sir *Benjamin Rudyard* obſerved, That they had provoked two mighty Kings, *(France* and *Spain)* that they had united them, and betrayed themſelves more than the Enemy could; that if the King drew one way, and the Parliament another, they muſt all ſink: He deſired the Houſe therefore to avoid all Conteſts with the King, and give him Leave to come off; he believed his Majeſty expected but the Occaſion: By truſting the King, and giving him a large Supply, according to his Wants, they would breed a Truſt in him; and by proſtrating their Grievances humbly at his Feet, they would find the beſt Way to his Heart: concluding, let us all labour to get the King on our Side, which may be no hard Matter, conſidering the near Subſiſtence between the King and People.

Sir Edward Coke.

Then Sir *Edward Coke* ſtood up to ſhew that Loans were againſt the Laws of the Land, reciting thoſe Words in the 25th of *Edw.* III. *Loans againſt the Will of the Subject, are againſt Reaſon, and the Franchiſes of the Land.*

Secretary Coke's *Speech.*

Mr. Secretary *Coke*, ſpoke in Behalf of the Court, propoſing both a Supply and Redreſs of Grievances: He acknowledged, illegal Courſes had been taken, which muſt be redreſſed by Laws and Puniſhments; but urged, that the Court had been neceſſitated to take theſe Courſes, and Neceſſity had no Law; they muſt enable the State to do what they required by their Petition: He would have them prepare a Repreſentation of their Grievances, but begin with the Supply, which would confound their Enemies more than ten Subſidies; and that they would not ſeem to put Conditions upon his Majeſty, who was a Prince jealous of his Honour.

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Sir Robert Phillip's *Speech.*

Sir *Robert Phillips*, on the other Side, ſaid, he acknowledged their Dangers from abroad were not chimerical, but real: They had provoked two potent Kings, who were ſtrongly united; but they muſt conſider their Dangers at home. He was more afraid of the Violation of their publick Rights at home than of a foreign Enemy. The late unaccuſtomed Violences affected all they had, though the People of this State were under no Subjection, but what they conſented to by the *Original Contract* between King and People: As there were Prerogatives and Privileges, conferred on the King, ſo there were left to the Subject many, very many, neceſſary Liberties and Privileges, notwithſtanding what thoſe two Sycophants, *Sibthorpe* and *Manwaring*, had prated in the Pulpit to the contrary: Never any King violated the Subjects Liberty and Property, but it was immediately complained of, and redreſſed; and he was confident his Majeſty would do the ſame, if he was applied to. And having taken notice of the reſt of the Grievances the former Gentleman had mentioned, he fell upon the Impriſonment of Sir *John Darnel*, Sir *John Heveningham*, &c. for not paying the Loan: He ſaid, *I can live, although I pay Exciſes and Impoſitions for more than I do; but to have my Liberty, which is the Soul of my Life, taken from me by Power, and to be pent up in a Jail, without Remedy by Law, and to be adjudged to periſh in a Jail; Oh improvident Anceſtors! Oh unwiſe Forefathers! to be curious in providing for the quiet Poſſeſſion of our Lands and Privileges of Parliament, and to neglect our Perſons and Bodies, and to let them die in Priſon, or remain there remedileſs,* durante bene placito. *If this be Law, what do we talk of our Liberties? Why do we trouble ourſelves with Diſputes of Law, Franchiſes, and Property of Goods? This is the Sum of all Miſeries, and I hope we ſhall ſpeak our Minds when this Judgment comes to be debated.*

All Things a State can be capable of, whether Bleſſings or Puniſhments, depend on this Meeting: If any think the King can be ſupplied, and the Commonwealth preſerved, without Redreſs of Grievances, he is deceived. The Kings of England *were never more glorious than when they truſted their Subjects. Let the Houſe therefore, prepare their Grievances, fit for his Majeſty's View; not make a Law to give us new Liberties, but declaratory, with Penalties; ſo that thoſe that violate them, if they will be vile, may fear Infamy with Men; and then we ſhall think of ſuch a Supply as never Prince received; with our Money we ſhall give him our Hearts, and give him a new People raiſed from the Dead: We ſhall go home to our Countries, and leave our Poſterities as free as our Anceſtors left us.*

The

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The Caſe of the Impriſonment of the Gentlemen, for not paying the Loan, being again debated in the Houſe of Commons, the 29th of *March*, 1628, Sir *Edward Coke* averred, That Perſons committed by the King or Council, without Cauſe ſhewn, might be bailed. To which Mr. Sollicitor replied, That by the ſame Sir *Edward Coke*, *Crook*, *Dodderidge*, and *Houghton*, the whole Court of *King's-Bench*, it had been reſolved, that the Cauſe need not be diſcloſed, being *per mandatum Concilii* as *Arcana Regni*; and by *Coke* it was then ſaid, *If the Privy-Council commit one, he is not bailable by any Court of Juſtice*, and that *Stamford*'s Opinion was ſo, *Folio* 72; and that his Opinion was the ſame on the Reſolution in the 34th of *Eliz.*

Sir Edward Coke *againſt himſelf.*

Sollicitor General.

Sir *Edward Coke* ſaid, that in Truth, when he read *Stamford*, he was of that Opinion; but of late, looking into the Records that had been cited, he was of another Mind. (From whence Sir *Edward*'s Enemies inferred, that his Opinion was not much to be regarded, having been of one Mind while he was in Office, and of another after he was diſmiſſed from Employment.)

Sir Edward Coke.

The Matter having been debated ſeveral Days in the Houſe of Commons, they came at length to the following Reſolutions, *Nemine contradicente.*

Reſolutions of the Commons, on the Subject of Liberty.

1. That no Freeman ought to be detained, or kept in Priſon, or otherwiſe reſtrained, by the Command of the King, or Privy-Council, or any other, unleſs ſome Cauſe of the Commitment, Detainer, or Reſtraint be expreſſed, for which by Law he ought to be committed, detained, or reſtrained.

2. That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every Man that is committed or detained in Priſon, or otherwiſe reſtrained, though it be by the Command of the King, the Privy-Council, or any other, he praying the ſame.

3. That if a Freeman be committed, or detained in Priſon, or otherwiſe reſtrained, by the Command of the King, the Privy Council, or any other; no Cauſe of ſuch Commitment, Detainer, or Reſtraint being expreſſed, for which by Law he ought to be committed, detained, or reſtrained; and the ſame be returned upon an *Habeas Corpus*, granted for the ſaid Party; then he ought to be delivered, or bailed.

They alſo unanimouſly reſolved, that it is the antient and indubitable Right of every Freeman, that he hath a full and abſolute Property in his Goods and Eſtate; that no Tax, Tallage, Loan, Benevolence, or other like Charge, ought to be commanded, or levied by the King, or any of his Miniſters, without common Conſent by Act of Parliament.

The Commons afterwards, at a Conference with the Lords, on the ſeventh of *April*, communicated theſe Reſolutions to them; when ſeveral of the Committee of the Commons made Speeches on the Occaſion, to induce the Lords to concur with them in theſe Reſolutions.

Sir Dudley Digg's *Speech at a Conference with the Lords, ſhewing the Antiquity of the Common Law.*

Sir *Dudley Diggs* opened the Conference, and ſaid, he was confident their Lordſhips would cheerfully join with the Commons, in acknowledging God's great Bleſſing, in their good King *Joſiah*, in whoſe Reign, as in that of *Joſiah* of old, they had found (he could not ſay a Book of the Law, but) many fundamental Points thereof neglected and broken, which had occaſioned their Deſire of this Conference.

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He ſaid he was commanded to ſhew, that the Laws of *England* were grounded on Reaſon, more antient than Books, conſiſting much in unwritten Cuſtoms, yet ſo full of Juſtice and true Equity, that their moſt honourable Predeceſſors and Anceſtors many Times propugned them with a *nolumus mutari*; ſo antient, that from the *Saxon* Times, they had continued for the moſt Part the ſame, as appeared in old remaining Monuments of the Laws of *Ethelbert*, the firſt Chriſtian King of *Kent*, *Ina* King of the *Weſt-Saxons*, *Offa* of the *Mercians*, and of *Alfred*, that great Monarch, who united the *Saxon* Heptarchy, whoſe Laws were yet to be ſeen.

That it was an undoubted and fundamental Point in this antient Common Law of *England*, That the Subject had a true Property in his Goods and Poſſeſſions, preſerving ſacred that *meum & tuum*, which was the Nurſe of Induſtry, and Mother of Courage; but this undoubted Birthright of free Subjects had lately been invaded and prejudiced by Preſſures, the more grievous, as they had been followed by Impriſonment, contrary to the Franchiſes of the Land; and when Redreſs had been ſought for, in a legal way, by demanding the Writ of *Habeas Corpus*, and a Diſcharge, or Trial according to the Law of the Land, they had failed of Succeſs; which had compelled the Commons to examine, by Acts of Parliament, Precedents, and Reaſons, the Reality of *Engliſh* Subjects Liberty, which he left to the learned Gentlemen that were to ſpeak after him, to communicate to their Lordſhips.

Sir Robert Cotton's *Speech, ſpecifying the Acts made in Behalf of Liberty and Property.*

Then Sir *Robert Cotton* (or, as others relate, Mr. *Littleton*) recited and explained the ſeveral Acts of Parliament, made in Behalf of Liberty and Property.

The firſt of theſe, he obſerved, was the *Grand Charter of Liberties*, firſt granted in the 17th Year of King *John*, renewed in the 9th Year of *Henry* III, and ſince confirmed in Parliament thirty Times; the Words whereof were, *Nullus liber homo capiatur vel impriſonetur aut diſſeiſietur, de libero tenemento, &c. Niſi per legale judicium parium ſuorum, vel per legem terræ.*

From whence it was evident, that no Freeman ought to be taken or impriſoned, but by the lawful Judgment of his Peers, or Equals, or *by the Law of the Land*; and *by Law of the Land*, he inſiſted, muſt be underſtood *due Proceſs of Law.*

That by 5 *Edw.* III. it was enacted, That no Man ſhould be attached by any Accuſation, nor forejudged of Life or Limb, nor his Lands, Goods, or Chattels, ſeized into the King's Hands, contrary to the Great Charter, and the Law of the Land; That the 25th of *Edw.* III. cap. 4. recites, that whereas it is contained in the Great Charter, that no Freeman ſhall be impriſoned, or put out of his Freehold, or free Cuſtom, unleſs it be by the Law of the Land; it is thereby eſtabliſhed, that

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that, from thenceforth, none ſhall be taken by Petition, or Suggeſtion, made to our Lord the King, or to his Council, unleſs it be by Indictment, or Preſentment; or by Proceſs, made by Writ Original, at the Common-Law.

By the 28th of *Edw.* III. cap. 3. It is enacted, That no Man, of what State or Condition ſoever he be, ſhall be put out of his Lands or Tenements; nor be taken, impriſoned, diſinherited, or put to Death, without he be brought in to anſwer by due Proceſs of Law.

That in a Parliament Roll of the 36th of *Edw.* III. The Commons petitioned, that the Great Charter, the Charter of the Foreſt, and other Statutes, made for the Profit of the King, and his Commonalty, might be firmly kept, without giving Diſturbance, or making Arreſt contrary to them, *by ſpecial Command*, or in other Manner. And the Anſwer to the Petition, which made it an Act of Parliament, was, Our Lord the King, by the Aſſent of the Prelates, Dukes, Earls, Barons, and Commonalty, hath ordained and eſtabliſhed, that the ſaid Charters and Statutes be held, and put in Execution, according to the ſaid Petition.

In a Parliament Roll of the 36th of *Edw.* III. there is a Petition and Anſwer of the like Tenor: The 37th of *Edw.* III. cap. 18. agrees in Subſtance with it. By the Statute of 42 *Edw.* III. cap. 13. it is enacted, That no Man ſhall be put to Anſwer, without Preſentment before Juſtices, or Matter of Record, or by due Proceſs and Writ Original, according to the old Law of the Land; and, if any Thing be done to the contrary, it ſhall be void in Law.

As to what was objected from the Statute of *Weſtm.* 1. cap. 15. which ſays, That a Man is not repleviable, who is committed by the Command of the King; and conſequently, that the Command of the King, without any Cauſe ſhewed, was ſufficient to commit a Man to Priſon, and detain him there:

He anſwered, That there was a Difference between *Repleviable*, which was always by the Sheriff, upon Pledges, or Sureties given, and *Bailable*, which was by a Court of Record, where the Priſoner is delivered to his Bail; and they are his Jailors, and may impriſon him, and ſhall ſuffer for him, Body for Body: As appeared by 33 and 36 *Edw.* III. Tit. *Mainprize*, 12 and 13. And, if the Words of the Statute were obſerved, it would plainly appear, that they extended only to the Sheriff, and other Inferior Officers, but did not bind the Hands of the Judges: For, in the Preamble, it is ſaid, Foraſmuch as *Sheriffs and others*, have taken and kept in Priſon, Perſons detected of Felony, *&c.* And in another Place, *Under Sheriffs*, *Conſtables*, *and Baliffs*, *are mentioned:* And in another Place, the Words are, *Sheriffs and others*, *which have taken and kept in Priſon:* And as every one knew, the Judges do neither arreſt, or keep Men in Priſon; that was the Office of Sheriffs, and other inferior Miniſters; and conſequently the Statute intended ſuch only, and not the Judges; they might ſtill bail Priſoners, by whomſoever committed.

This Interpretation he confirmed by the Authority of *Newton*, Chief Juſtice, 22 *Hen.* VI. 46. where he ſays, It cannot be intended, that the Sheriff did ſuffer him to go at large by Mainprize; for, where one is taken by the Writ of the King, or the Commandment of the King, he is Irrepleviable; but in ſuch caſe his Friends may come to the Juſtices from him, if he be arreſted, and purchaſe a *Superſedeas:* Here the Judge declares, That the Sheriff had no Power, but the Judges had Power to deliver him that was committed by the King's Command; and both the antient and modern Practice manifeſt as much; for he that is taken for the Death of a Man, or for the Foreſt, is not Repleviable by the Sheriff: But the Juſtices of the King's Bench do bail for Murder, and for Offences done in the Foreſt, which they could not do, if the Word *Irrepleviable* in *Weſtm.* 1. were meant of the Judges, as well as of the Sheriffs; concluding, that he conceived, he had now cleared the Declaration of perſonal Liberty, an antient and undoubted Truth, which, he obſerved, was fortified by ſeven Acts of Parliament, and not oppoſed by any Statute or Authority of Law whatever.

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Mr. Selden's *Speech, ſhewing the Precedents for bailing Perſons committed by the King, or Council.*

Mr. *Selden*, being appointed to open and explain the Precedents, for bailing ſuch Perſons as were committed by the King's ſpecial Command, or by the Command of the Privy-Council, ſaid, That in all Caſes, where any Right or Liberty, belonged to the Subject, there was alſo a Remedy by Law, for the enjoying, or regaining, this Right or Liberty, when it was taken from him.

That the Writ of *Habeas Corpus*, or *Corpus cum cauſa*, was the only Remedy for him, that was impriſoned by the ſpecial Command of the King, or the Lords of the Council, without ſhewing the Cauſe of the Commitment; and this Writ could not be denied the Subject: That the Precedents which concerned this Point, were of two Kinds: 1. Such as ſhewed expreſly, that Perſons committed by the Command of the King, or of the Council (without other Cauſe ſhewed) had been enlarged upon Bail, when they prayed it; whence it appeared plainly, that they were bailable, and to be ſet at Liberty: For, though they ought not to have been committed without a Cauſe ſhewn of their Commitment, yet the Judges, it was true, had always paid ſuch Reſpect to ſuch Commitments by the Command of the King, or Council, that upon the *Habeas Corpus* they rarely diſcharged the Perſon abſolutely at firſt, but only enlarged him upon Bail. 2. The ſecond Kind of Precedents, he ſaid, were ſuch, as it had been pretended, would prove the Law to be otherwiſe; and that Perſons ſo committed ought not to be bailed.

Of the firſt Kind, he ſaid, there were twelve, fully and directly in the Point, to prove, that Perſons ſo committed, were to be delivered upon Bail: And of the ſecond, he averred, there was not one that proved the contrary: And having cited the ſaid ſeveral Precedents, and made his Comments upon them, he left them with their Lordſhips, for their further Conſideration.

Sir Edward Coke *appointed to ſhew the Reaſonableneſs of theſe Laws.*

The famous Sir *Edward Coke* being appointed by the Commons, to ſhew the *Reaſonableneſs* of admitting Men to bail, that were committed by the King, or Council, made a heavy Declamation

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Declamation on that Subject; which having very little in it to the Purpose, but what had been insisted on before by others, I shall forbear taking any further Notice of it.

The Arguments for bailing Prisoners, committed by the King, &c. answered by Mr. Attorney.

After this, the Attorney-General answered the Arguments of the Committee of the House of Commons; and they replied to him. Both Sides insisted, it seems, on the same Acts of Parliament, Records, and Precedents; but differed in the Interpretation of them: And it was often remembered, that Sir *Edward Coke* had declared himself of one Opinion, both in the Council Chamber, and the Court of *King's-Bench*, while he was in Place; and of another, when he was turned out, and became a Malcontent.

Serjeant Ashley's Argument, for the King.

Serjeant *Ashley*, King's Serjeant, was afterwards permitted to deliver his Sentiments on this great Case, at a Conference of both Houses.

He observed, that it had been given out, that the King's Counsel had yielded up the Cause, because they acknowledged the Statute of *Magna Charta*, and the other Statutes confirming it, were yet in Force: But this would not follow upon their Acknowledgment; for then no Imprisonment could be justified but by Process of Law, which he utterly denied; for that a Constable might *ex officio*, without any Warrant, arrest and restrain a Man, to prevent an Affray, or to suppress it. Also, any Man that was no Officer, might apprehend a Felon without Writ, or Warrant. The Judges of the several Courts might commit a Man, either for Contempt, or Misdemeanor, without either Process or Warrant. Nor could the Counsel, on the other Side, deny, but if the King would alledge Cause, he might commit a Man, as the Judges do, without Process, or Warrant: Whereupon, he said, he did positively, and with Confidence, affirm, that Imprisonment, in many Cases, might be lawful, without Process, and was not prohibited by any Statute.

That the King, or Council, might commit to Prison, *per legem terræ:* That there were several Jurisdictions, or Laws, in this Kingdom, which were reckoned the Law of the Land, besides the Common Law; as the Ecclesiastical Law, the Admiral's Jurisdiction; and, in Time of War, Martial Law; and there was a particular Law, for Merchant Strangers.

In like Manner, there was a Law of State: When the Necessities of the State required, they might proceed by natural Equity. Infinite were the Occurences of the State, to which the Common Law extended not.

That if the King, or his Council, might not commit, how should they compel Obedience to Acts of State: But the very Act of *Westm.* 1. shewed plainly, that the King might commit, and that his Commitment was lawful; or else that Act would never have declared a Man to be irrepleviable, who was committed by the Command of the King. God had given to Kings, Scepters, Swords, and Crowns: Scepters to institute, and Swords to execute, Laws; and Crowns, as Ensigns of that Power and Dignity, with which they were invested: And could we imagine, that the King had so far transferred the Power of his Sword, to inferior Magistrates, that he had not reserved so much of his supreme Power, as to commit an Offender to Prison? We called him the Fountain of Justice, and would we so far exhaust that Fountain, as to leave it dry? But those that admitted he had so much Power, required he should express the Cause: This might be of mischievous Consequence: There was no State, or Government, whether Monarchical, or of any other Frame, which had not some Secrets of State, not communicable to vulgar Understandings; of which he gave this Instance: If a King employed an Ambassador to any foreign State, with Instructions, and he pursued them not, whereby Danger and Dishonour accrued to the Kingdom, might he not be committed by his Majesty? And yet his Instructions, and the Manner of his miscarrying, might not be fit to be declared to every Keeper of a Prison, and by him certified to the Judges, and debated in the Presence of the Multitude: He concluded therefore, that the King, and his Council, had Power to punish by imprisonment, without shewing particular Cause; especially where it might tend to the discloſing Secrets of State: But, if he might freely speak his Mind, he thought it a Question too high to be agitated: For, however it should be determined, the King, or his Subjects, or both, would be Losers. If the Subject prevailed, he would lose the Protection of the Government; and if the State prevailed, it might end in absolute Sovereignty; but the King would lose the Hearts of his Subjects, the firmest Support of his Throne. The best Way therefore, he conceived, would be to find out some *Medium*, to accommodate the Difference.

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Mr. Serjeant having ended his Speech, the Lord President acquainted the Commons, that though at this free Conference Liberty had been given by the Lords, to the King's Counsel, to speak what they thought fit for his Majesty; yet the Serjeant had no Authority, or Direction, from them, to speak in the Manner he had done; and he was committed to Custody: But, upon his declaring his Sorrow for any hasty Expression he might have used, he was discharged.

Serjeant Ashley committed.

During these Conferences between the two Houses, *viz.* on the 14th of *April*, the Earl of *Suffolk* was charged in the House of Commons, with having said, *That Mr.* Selden *had razed a Record, and deserved to be hanged, for going about to set Divisions between the King and his Subjects*: Whereupon the Commons resolved, that a great Injury had been done them, Mr. *Selden* having been employed by them in the Conference with the Lords, in the great Cause, concerning the Liberty of the Subject; and sent a Message to the Lords, by Sir *Robert Phillips*, to demand Justice against the Earl of *Suffolk*, and to inform them, that the Words were spoken to Sir *John Strangeways*, a Member of the Commons House.

The Earl of Suffolk charged with affronting the Commons.

Who demand Justice against him.

To whom the Lords answered, that the Earl of *Suffolk*, being a Man of great Place and Honour, had voluntarily protested, upon his Honour and Soul, that there passed no such Words as those from him to Sir *John Strangeways*.

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On reporting which Anſwer, Sir *John Strangeways* proteſted in the Houſe of Commons, that, notwithſtanding the Earl's Denial, he did ſpeak thoſe Words unto him; and he would maintain it, any Way fitting a Member of that Houſe, or a Gentleman of Honour.

On the 17th of *April*, Sir *John Elliot* reported from the Committee, appointed to take into Conſideration, what was fit to be done, for the Juſtification of Sir *John Strangeways*: That they had examined Sir *Chriſtopher Nevill*, who being in the Lords Committee-Chamber, the Earl of *Suffolk* ſaid to him; *Mr. Attorney hath cleared the Buſineſs, and made the Cauſe plain on the King's Side*; and further ſaid, *Mr.* Selden *hath razed a Record, and deſerved to be hanged; and the Lower Houſe would do well, to join with the higher, in a Petition to the King to hang him; for he went about to divide the King from his People*, or Words to that Effect: That Mr. *Littleton* alſo depoſed, he heard the Earl of *Suffolk* ſay, that he would not be in Mr. *Selden*'s Coat for 10000 *l.* and that Mr. *Selden* deſerved to be hanged. Whereupon the Commons reſolved; 1. That the Earl of *Suffolk*, notwithſtanding his Denial, had laid a moſt unjuſt and ſcandalous Imputation upon Mr. *Selden*, a Member of the Houſe, employed in the Service of the Houſe, and therein upon the whole Houſe of Commons. 2. That the Houſe, upon due Examination, was fully ſatisfied, that Sir *John Strangeways* had affirmed nothing but what was moſt true and certain; and, 3. That the Earl of *Suffolk* be again charged with it, at the Lord's Bar; and the Lords deſired to proceed in Juſtice againſt the Earl, and to inflict ſuch Puniſhment upon him, as an Offence of ſo high a Nature deſerved: *But the Matter ſeems to have been accommodated amicably.*

After theſe Debates, the Houſe of Peers required the Judges of the *King's-Bench*, to give their Reaſons, for the Opinions they had delivered in that Court, againſt bailing the Gentlemen, who had brought their Writs of *Habeas Corpus* to be bailed: Which the Judges at firſt excuſed themſelves from doing, till they had obtained the King's Leave; but having his Majeſty's Permiſſion, they very readily declared the Grounds they went upon.

The Judges give their Reaſons againſt bailing the Gentlemen.

And, firſt, Judge *Whitlock* ſaid, they were very ready, by their Lordſhip's Appointment, to clear any Aſperſion of the Houſe of Commons, in their late Preſentment on the *King's-Bench*, for a Wrong done the Subject (as they ſaid,) by a Judgment lately given there; though if there had been any ſuch Thing, their Lordſhips, and not the Commons, had Power to queſtion and adjudge the ſame: But he averred, there was no Judgment given, whereby either the Prerogative might be enlarged, or the Right of the Subject trenched upon. It was true, in *Michaelmas* Term laſt, four Gentlemen did bring their Writs of *Habeas Corpus*, and the Return was *per ſpeciale mandatum domini Regis*; and had they delivered them preſently, it muſt have been, becauſe the King did not ſhew the Cauſe, and ſo ſhould have adjudged, the King had done Wrong, which was beyond their Knowledge; for he might have committed them for other Matters than they imagined; and if it was objected, that thus theſe Gentlemen might have remained in Priſon all their Days: He anſwered, No; they did remit them only, till they might adviſe of the Matter: Had they bailed them immediately, they muſt have reflected on the King, that he had unjuſtly impriſoned them: And it appeared in *Dyer*, 2 *Eliz.* that divers Gentlemen being committed, and requiring Writs of *Habeas Corpus*, ſome were bailed, and others remitted; whereby it appeared, much was left to the Diſcretion of the Judges: And, at laſt, this was no Judgment; Mr. Attorney, indeed, had preſſed to have a Judgment entered for his Majeſty's Service: But they had commanded the Clerk to make no Entry, but in the old Form. He had ſpent his Time, he ſaid, in this Court, and never knew, by any Record, that, upon ſuch a Return as that, a Man was bailed, before the King was conſulted.

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Judge *Jones* alſo declared, that no Judgment had been given: The Matter of Fact was, he ſaid, as his Brother had related it; adding, that if one had been committed by the Houſe of Commons, they would not have taken it well, if he had been bailed at his firſt Appearance in Court; nor would the King have done ſo in this Caſe.

Judge *Dodderidge* ſaid, upon conſideration of the Statutes and Records, they did not think they came ſo cloſe to the Caſe, as that Bail thereupon ſhould be immediately granted; but they might have had a new Writ the next Day; and he wiſhed, they had; for then they had ſeen more, and they had been eaſed of a great deal of Trouble: That the Attorney, on granting a *Remittitur*, preſſed for an Entry: But they all ſtraitly charged the Clerk, that he ſhould make no other Entry, than ſuch as their Predeceſſors had uſually made: And, as for the Difference that ſome had made, between a *Remittitur* and a *Remittitur quouſq*; he never yet met with any, though he had ſat in that Court fifteen Years.

The Lord Chief Juſtice, Sir *Nicholas Hyde*, ſaid, It was true, if the King could not commit, they had done wrong; but he knew of no ſuch Statute, that declared, the King might not commit: That, as to the Precedents the Priſoner's Counſel brought, they had ſhewn them they were miſtaken; and if they had erred, they had erred with their Fathers: There could be no Precedent ſhewn, where their Predeceſſors had not done as they had done; ſometimes bailing, ſometimes remitting, ſometimes diſcharging; but they never bailed any, committed by the King, or his Council, till his Pleaſure was firſt known. *Thus did the Lord Chief Juſtice* Coke *in* Reynard's *Caſe.* It was objected, indeed, that this would have been done, if the King had not written: But why then was the Letter read, and publiſhed, and kept? And why was the Town-Clerk ſent carefully to enquire, whether the Men offered for Bail, were Subſidy Men, as the Letter directed? The Letter alſo ſhewed, that *Beckwith* was committed for Suſpicion of being concerned in the Powder-Plot; but no Proof being produced, the King *conſented* he ſhould be bailed.

There were ſome Speeches afterwards made in the Houſe of Lords, ſome approving, and others

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The Commons draw up a Petition of Right. The Lords offer them five Propoſitions.

others cenſuring the Judges Conduct: The Commoners in the mean Time were framing a Petition of Right, about which they had ſeveral Conferences with the Lords, to obtain their Concurrence: At one of theſe Conferences, on the 25th of *April*, 1628. Doctor *George Abbot*, Archbiſhop of *Canterbury*, ſaid, he was directed by the Lords to obſerve to them, that his Majeſty's Service, and the Safety of the Kingdom, required they ſhould diſpatch the Buſineſs before them with all Expediton; and that their Lordſhips did in general agree with them, and did not doubt, but the Commons would agree with the Lords, to maintain and ſupport the Fundamental Laws of the Kingdom, and the Liberty of the Subject: That they did not reject what had been offered them by the Commons; but then their Lordſhips had drawn up ſome Propoſitions agreeing with them in Subſtance, which ſhould be read to them; and, if the Commons differed with their Lordſhips, he deſired, they would ſtrike out, alter, or diminiſh, as they thought fit, that they might arrive at the End they both ſo much aimed at.

Which are read.

Then the Lords five Propoſitions were read, and are as follow:

1. That his Majeſty would be pleaſed graciouſly to declare, that the good old Law, called *Magna Charta*, and the ſix Statutes, conceived to be Declarations and Explanations of that Law, do ſtill ſtand in Force, to all Intents and Purpoſes.

2. That his Majeſty would be pleaſed graciouſly to declare, that, according to *Magna Charta*, and the Statutes aforenamed, as alſo according to the moſt ancient Cuſtoms and Laws of the Land, every free Subject of this Realm, hath a fundamental Property in his Goods, and a fundamental Liberty of his Perſon.

3. That it is his Royal Pleaſure, to ratify and confirm unto all and every his loyal and faithful Subjects, all their ancient, ſeveral, juſt Liberties, Privileges, and Rights, in as ample and beneficial Manner, to all Intents and Purpoſes, as their Anceſtors did enjoy the ſame under the Government of the beſt of his moſt noble Progenitors.

4. That his Majeſty would be pleaſed graciouſly to declare, for the good Content of his loyal Subjects, and for the ſecuring them from future Fear, that in all Caſes, within the Cognizance of the Common Law, concerning the Liberties of the Subject, his Majeſty would proceed, according to the Common Law of this Land, and according to the Laws eſtabliſhed in the Kingdom, and in no other manner or wiſe.

5. As touching his Majeſty's Royal Prerogative, *intrinſical to his Sovereignty*, and intruſted him withal from God, *Ad communem totius populi ſalutem, & non ad deſtructionem*, his Majeſty would reſolve not to uſe the ſame to the Prejudice of any of his loyal People, in the Property of their Goods, or Liberty of their Perſons. And in caſe, for the Security of his Majeſty's Royal Perſon, the common Safety of his People, or the peaceable Government of this Kingdom, his Majeſty ſhall find juſt Cauſe, for Reaſons of State, to impriſon, or reſtrain any Man's Perſon, his Majeſty would graciouſly declare, that *within a convenient Time*, he ſhall, and will, expreſs the Cauſe of the Commitment, or Reſtraint, either general or ſpecial; and upon a Cauſe ſo expreſſed, will leave him immediately to be tried, according to the common Juſtice of the Kingdom. 1628. 4 Car. I.

To theſe Propoſitions, Sir *Dudley Diggs*, at the ſame free Conference, replied, That the Commons would be as ready to propugn the juſt Prerogative of his Majeſty, as their Lordſhips: But, as they are a great Body, that muſt adviſe upon all new Propoſitions, they could not give a preſent Anſwer to them, but would faithfully report them to the Houſe; from whence, in due Time, their Lordſhips ſhould receive an Anſwer.

The Senſe of the Commons, on theſe Propoſitions.

The next Day, being the 26th of *April*, the five Propoſitions being reported in the Houſe of Commons, Mr. *Selden* made a Speech upon the Occaſion, and obſerved, that the firſt of theſe Propoſitions, (*viz.*) To declare, that *Magna Charta*, and the ſix Statutes conceived to be Declarations and Explanations of that Law was ſtill in Force, was of no Uſe; for no Body doubted it: And, for the ſecond, That his Majeſty would declare, that every Subject had a Property in his Goods, and Liberty of his Perſon, he never heard it denied, but in the Pulpit, which was of no Weight: For the third, that his Majeſty would confirm all their juſt Liberties, none could tell what that would produce: For the fourth, It was not fit to be asked, *viz.* That in all Caſes, within the Cognizance of the Common Law, concerning Liberty, his Majeſty would proceed according to the Common Law. If Perſons were committed, the Courts of Juſtice were open for the Parties to ſeek Juſtice. And, if any Thing was done againſt Law there, it was the Fault of them that ſat there: So they ſhould take it. His Majeſty did nothing againſt Law: And as for the fifth, It was not fit to be had, and therefore not fit to be asked. If they had a Law to that Purpoſe, it would deſtroy their fundamental Liberties: What ſhould be interpreted, *Convenient Time? Who ſhould judge of it, but the Judges?* Any Man might be committed by that Clauſe, at pleaſure; none were exempted: At this little Gap every Man's Liberty might in Time go out.

His Majeſty obſerving that the Commons ſpent their whole Time in Debates on theſe Propoſitions, came to the Houſe of Peers the 28th of *April*, and the Commons being ſent for up, the Lord Keeper made a Speech to both Houſes: Wherein he told them his Majeſty's Affairs were ſo preſſing, that they would admit of no Delay; and foreſeeing that their Debates would probably take up more Time than the Affairs of Chriſtendom would allow; his Majeſty had thought of this Expedient to ſhorten the Buſineſs, by declaring the Clearneſs of his own Heart and Intention; and, therefore, had commanded him to let them know,

The King's Declaration, on this Subject.

That he holdeth the Statute of Magna Charta, *and the other Statutes inſiſted upon for the Subject's Liberty, to be all in Force; and aſſures you, that he will maintain all his Subjects in the juſt*

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juſt Freedom of their Perſons, and Safety of their Eſtates; and, that he will govern according to the Laws and Statutes of this Realm; and, that ye ſhall find as much Security in his Majeſty's Royal Word, and Promiſe, as in the Strength of any Law ye can make; So that hereafter ye ſhall never have Cauſe to complain. And therefore deſired no Doubt, or Diſtruſt, might poſſeſs any Man, but that they would proceed ſpeedily and unanimouſly in the Buſineſs.

Secretary Cook's Speech, for the King.

The Commons being returned to their Houſe, Mr. Secretary *Cook* endeavoured to perſuade them to comply with the King: He ſaid, it was to be preſumed his Majeſty's Government would be according to Law: They could not but remember what his Father ſaid, *He is no King, but a Tyrant, that governs not by Law:* This Kingdom was to be governed by the Common Law, as his Majeſty had aſſured them it ſhould; all their Difference was in the Application of that Law: The general Government of the Kingdom in State Affairs, was in the Council-board, which might vary from the Common Law of the Kingdom in extraordinary Caſes: As in the Time of Dearth; Property of Goods might in ſuch a Time be forced, and the Owners compelled to bring Corn, and other Proviſions, to Market: When Coals have been held up at exceſſive Rates, the Council-board had cauſed them to be brought out and ſold: In Time of Peſtilence, Men might be reſtrained of their Liberties: If a Schiſm aroſe in the Church, the State might enquire into the Favourers of it: And if an Invaſion was threatned and managed by the King's Subjects, it was in the Power of the Government to reſtrain ſuch diſloyal Subjects of their Liberties: They daily ſaw all Laws broken, and all Laws would be broken for the publick Good: That his Majeſty had aſſured them, they ſhould never have Cauſe to complain for the future, and they ought to rely on his Royal Word: And as he had ſhewed himſelf the beſt of Kings, they would do well to acknowledge his Goodneſs, and promote that Union which they all deſired.

Sr Benjamin Rudyard's *on the other Side.*

On the other Side, Sir *Benjamin Rudyard* ſaid, That Liberty was a precious Thing, and he that did not value it, deſerved to be valued accordingly: That the very Scope and Drift of *Magna Charta*, was to reduce the *Regal* to a *Legal* Power, in Matter of Impriſonment, or elſe it had not been worthy ſo much contending for. That it was true, no Court of Juſtice in *England* would diſcharge a Priſoner committed by the King, *Rege inconſulto*, without acquainting the King, yet this good Manners was never made a legal Part of the Delivery.

It had been objected, that the King ought to have a Truſt repoſed in him; God forbid but he ſhould: He owned that it was impoſſible to take it from him; for the Wit of Man could not deviſe a Law that could comprehend all Particulars, all Accidents; extraordinary Caſes would happen, and when they came, if the Adminiſtration was for the common Good, there could be no Law urged againſt it; but the Law muſt be general, otherwiſe Admiſſions and Exceptions would fret, and eat out the Law to nothing. The King's Prerogatives were rather beſides the Law, than againſt it; and when they were directed to right Ends for the publick Good, they were not only concurring Laws, but Laws of ſingular Excellence. The King was certainly very tender of his preſent Honour, and of his Fame hereafter; and would think it hard, to have a worſe Mark ſet upon his Government, than upon any of his Anceſtors, by extraordinary Reſtraints; but as his Majeſty was good as well as great, he had intimated to them, that he would willingly have the Abuſe of Power reformed. By which he verily believed, his Majeſty well underſtood, what a miſerable Power it was, that had produced ſo much Weakneſs to himſelf, and to the Kingdom. That he ſhould be glad to ſee that good old decrepit Law of *Magna Charta*, that had been long bed-rid, as it were, walk abroad again, with new Vigour and Luſtre, attended by the other ſix Statutes: He doubted not but, upon a Conference with the Lords, they ſhould happily agree upon a Bill againſt Impriſonment for Loans, and Privy-Seals. As for *Intrinſecal Power* and *Reaſon of State*, they were Matters in the Clouds, where he deſired to leave them: Only as to reaſon of State he would ſay, that in the Latitude it had been uſed, it had eaten out, not only the Laws, but all the Religion of Chriſtendom: But recommended it to them, that they would ſo carry Things, that they might ſee Parliaments on Foot; for as long as they were frequent, there would be no irregular Power; there could be no total or final Loſs of Liberty, but by the Loſs of Parliaments. As long as they laſted, what they could not get at one Time, they might at another.

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Biſhop Hall's Letter to the Commons, for an Accommodation.

The ſame 28th of *April*, Doctor *Joſeph Hall*, Lord Biſhop of *Exeter*, ſent a Letter to the Houſe of Commons on this Subject, wherein he adviſes them, to be wiſe in their well-meant Zeal, and not argue away that precious Time that could never be recalled; obſerving, that while they diſputed, their Friends in *Germany*, the (*Palatinate* and *Rochelle*) periſhed, and they muſt follow them, adding: *Where are we if we break? (and I tremble to think) we cannot but break, if we hold ſo ſtiff. Our Liberties and Properties are ſufficiently declared to be ſure and legal; our Remedies are clear and irrefragable: What do we fear? Every Subject now ſees the Way chalked out for future Juſtice, and who dares from henceforth tread beſide it? Let us not, while we overrigidly contend for an higher Strain of Safety, put ourſelves into a Neceſſity of Ruin, and utter deſpair of Redreſs. Let us not, in Suſpicion of Evils that may be, caſt ourſelves into preſent Confuſion. If you love yourſelves and your Country, remit ſomething of your own Terms; and ſince the Subſtance is yeilded by our noble Patriots, ſtand not too rigorouſly upon Points of Cricumſtance. Fear not to truſt a good King, who after the ſtricteſt Laws are made, muſt be truſted with the Execution. Think that your Country, nay Chriſtendom, lies at the Mercy of your preſent Reſolutions. Relent, or farewel Welfare.*

From him, whoſe faithful Heart bleeds in a vowed Sacrifice for his King and Country,

EXETER.

Still

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The King's Meſſage, If they would rely on his Word?

Still the Commons continued their Debates on the Violation of their Liberties and Properties; whereupon Mr. Secretary *Cook* brought them a Meſſage from his Majeſty, on the firſt of *May*, deſiring to know, whether the Houſe would reſt ſatisfied with his Royal Word, declared to them by the Lord Keeper? And aſſuring them if they did, it ſhould be Royally performed.

Mr. Secretary Cook's *Speech upon it.*

Upon this a profound Silence following, Mr. Secretary *Cook* roſe up again, and ſaid, I am ſtill confident of a good Iſſue of this Parliament, for I know his Majeſty is reſolved to do as much as ever King did for his Subjects: but if they conſidered his Majeſty, a young King, juſt come to his Crown, engaged in War, and yet denied neceſſary Supplies; what could they expect, when he was reduced to ſuch a State? That his Majeſty had called this Parliament to make up the Breach; aſſured them they ſhould have no further Cauſe to complain; aſſured them that the Laws ſhould be eſtabliſhed; and what could they deſire more? The Diſpute was, concerning the Liberty of the Subject, and the King's Prerogative; he hoped they did not mean to add any Thing to themſelves to depreſs him: Did they expect greater Liberties than their Forefathers had, and deſign to put the Crown into a worſe Condition than ever? He durſt not adviſe his Majeſty to admit of that: If what they now deſired was no Innovation, it was all mentioned in the Acts and Statutes that had been cited; and whatever they would add more, muſt be a Diminution of the King's Power, and an Addition to their own. They had a wiſe and prudent Prince to deal with, who had a Sword in his Hand for their Good; and this Good muſt be ſupported by Power: Did they think by their Debates, and putting Law-Caſes, they could make that not to be Law, which in Experience they every Day found neceſſary?

He muſt tell them freely, that he knew by Experience, and by the Place he held under his Majeſty, if he would diſcharge his Duty, he muſt commit, and neither expreſs the Cauſe to the Jaylor, nor to the Judges, nor to any Counſellor in *England*, but to the King himſelf; and deſired them to recollect, if thoſe who had been in the ſame Place, had not thus committed Men, without any Scruples or Doubts made of their Authority, or any Complaint made by the Subject. But, ſhould he do this without real Cauſe, and could not make the Neceſſity of it appear, when he was called upon, he muſt expect a heavier Puniſhment from his Majeſty than the Law could inflict.

The Houſe were ſtill divided, whether they ſhould reſt ſatisfied with his Majeſty's Royal Word, for the Eſtabliſhment of their Liberties, or inſiſt on their being ſecured in a parliamentary Way: Sir *Thomas Wentworth*, who concluded the Debate, ſaid, ſince, there had been a publick Violation of the Laws by his Majeſty's Miniſters, nothing would ſatisfy him, but a publick Amends: Their Deſire to vindicate the Subjects Right by Bill, was no more than their Anceſtors had ſhewn in the like Caſes.

They inſiſt on a Bill for their Security.

Another Meſſage from his Majeſty.

During theſe Debates the Commons received another Meſſage from his Majeſty, by Mr. Secretary *Cook*, declaring, That however they proceeded, his Reſolution was to govern them according to the Laws and Cuſtoms of the Realm: That he would maintain them in the Liberties of their Perſons, and Properties of their Goods, ſo that they might enjoy as much Happineſs as their Forefathers did in the beſt Times: That he would rectify what had been amiſs, ſo that there ſhould be no juſt Cauſe to complain. And, as his Majeſty would rank himſelf among the beſt of their Kings, and ſhew he had no Intention to invade their lawful Liberties or Rights, ſo he would have them match themſelves with the beſt Subjects, not encroaching on that Sovereignty and Prerogative, which God had put into his Hands for their Good; but by containing themſelves within the Bounds and Laws of their Forefathers, without reſtraining, or enlarging them, by new Explanations, Expoſitions, and Additions, which he ſhould never give way to: That the Affairs of Chriſtendom were come to ſuch a Criſis, that they would admit of no longer Delay; and therefore he ſhould put an End to the Seſſion on *Tueſday* ſeven-night; and, if the Houſe was not ready in that Time to do what was fit for themſelves, it would be their own Faults.

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Upon reading this Meſſage, Sir *John Elliot* ſaid, he feared his Majeſty was miſinformed, in what they were about, and propoſed their repreſenting to him, that they were not about making any thing new; obſerving they had received many Interruptions by Meſſages, founded upon Miſreports, and Miſrepreſentations, to his Majeſty.

Sir *Miles Fleetwood* ſaid, the Breach of this Parliament would be the greateſt Miſery that ever befel them: The Eyes of Chriſtendom were upon them: All their Proteſtant Friends were ready to be ſwallowed up by the Emperor's Forces: Their own Kingdom in a miſerable State: Their Religion invaded by the *Roman* Catholicks, under Colour of a Commiſſion, that was intolerable: The Defence of the Realm, by Shipping, decayed: The King's Revenue ſold, and gone; and where ſhould Relief be obtained, but in Parliament? propoſing they ſhould proceed by way of Bill, to eſtabliſh the fundamental Laws of Liberty and Property.

Their Grievances ſummed up.

At length the Commons agreed upon an Anſwer to all the King's Meſſages, which was preſented to his Majeſty, on the 5*th of* May, *by their Speaker.*

The Commons Anſwer to the King's Meſſages.

In this Meſſage they thank his Majeſty, for his many ample Expreſſions, of his Affection and Promiſes of governing them according to Law, and to maintain their Liberties and Properties: And as his Majeſty deſired to know, if they would reſt upon his Royal Word and Promiſe; they aſſured him, their greateſt Confidence was in his Grace and Goodneſs; without which, nothing they could frame, would be of any Safety, or Value to them; deſiring he would believe, they had as full Confidence in his Royal Word and Promiſe, as any Houſe of Commons ever repoſed in their beſt Kings.

But as there had been, of late, a publick Violation of the Laws, and the Subjects Liberties, by ſome of his Majeſty's Miniſters, they conceiv'd, nothing leſs than a publick Remedy would raiſe the dejected Hearts of his loving Subjects, to a chearful Supply of his

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Majeſty; and *begged Leave to lay hold of that gracious Offer, of ſecuring their Rights and Liberties, by way of Bill:* That it was far from their Intentions, to encroach on his Sovereignty, or Prerogative; nor had they the leaſt Thought of ſtretching, or enlarging, the Laws, by any new Interpretations, or Additions: Their Deſires extended no farther, than to ſome neceſſary Explanation on that, which was truly comprehended within the Meaning of thoſe Laws; with ſome moderate Proviſion for Execution and Performance, as in Times paſſed, on like Occaſions, had been uſed.

His Majeſty's Reply.

To this his Majeſty replied, by the Lord Keeper *Coventry*, that he expected an Anſwer by their Actions, and not by dilatory Diſcourſes: They pretended to acknowledge a Truſt and Confidence in his Majeſty, but did not expreſs it in their Words and Actions; for what needed Explanations, if they doubted not the Performance of the true Meaning of theſe Statutes? Explanations would hazard an Encroachment on his Prerogative: And what needed a new Law, to confirm an old, if they repoſed any Confidence in the Declarations his Majeſty made to both Houſes, (as they themſelves acknowledged they did)? But, to ſhew clearly the Sincerity of his Majeſty's Intentions, he was content, that a Bill be drawn for the Confirmation of *Magna Charta*, and the ſix other Statutes, inſiſted upon for the Liberties of the Subject; but without Additions, Paraphraſes, or Explanations.

But if they ſought to tie the King's Hands, by new and impoſſible Bonds, they muſt be accountable to God and their Country, for the ill Succeſs of this Parliament. It was his Majeſty's Pleaſure, that, without further Replies, or Meſſages, or other unneceſſary Delays, they ſhould do what they meant to do ſpeedily, remembring the Shortneſs of the Time.

This Reply being debated by the Commons, Mr. Secretary *Cook* again propoſed their relying on the King's Word, as more advantageous than a Bill, as it would engage his Majeſty's Affections to his People.

Sir *Edward Coke*, on the other Side, ſaid, It was never known, that general Words were a Satisfaction for particular Grievances: Never any Parliament relied on Meſſages. He did not diſtruſt his Majeſty; but Kings muſt ſpeak by Record, and in Particulars, and not in Generals. All ſucceeding Kings would ſay, *Ye muſt truſt me, as you did my Predeceſſors; and truſt my Meſſages.* Let us put up a Petition of Right; not that I diſtruſt the King, but that I cannot take his Truſt, but in a Parliamentary Way.

The Commons agree upon a Petition of Right.

And the Houſe agreeing to the Motion of Sir *Edward Coke*, the Petition of Right was finiſhed, and delivered to the Lords, at a Conference, for their Concurrence. In the mean Time their Lordſhips received a Letter from the King, importing, that his Majeſty, being deſirous of nothing more, than the Peace and Proſperity of his People, had permitted free Debates on the higheſt Points of his Prerogative, which his Predeceſſors had ever reſtrained, being Matters they would not ſuffer to be diſcuſſed in Parliament: That he had alſo condeſcended to the Deſires of his Subjects, in other things, ſo far, that it might fully ſatisfy all moderate Minds, and free them from all Fears and Jealouſies: But ſtill he found it inſiſted upon, that in no Caſe whatever, neither he, nor the Privy-Council, had any Power to commit a Man, without the Cauſe ſhewed: But ſhould he depart from that Rule of Government, practiſed for ſo many Ages, it would ſoon diſſolve the very Foundation and Frame of the Monarchy: Wherefore, as he had already made ſuch Propoſitions to the Commons, as might equally preſerve the juſt Liberty of the Subject; ſo he thought good to let their Lordſhips know, that without the Overthrow of Sovereignty, he could not ſuffer this Power to be impeached: However, his Majeſty declared his Reſolution to be, That neither he nor his Privy-Council, ſhould at any Time after, commit, or command to Priſon, or otherwiſe reſtrain, the Perſon of any, for not lending Money, or for any Cauſe which did not concern the publick Safety: And that in all Caſes of this Nature, which ſhould happen for the future, he would, upon the Petition of the Party, or the Addreſs of the Judges, readily expreſs the true Cauſe of Commitment, ſo ſoon as with Convenience and Safety the ſame was fit to be diſcloſed; and that in all criminal Cauſes, of ordinary Juriſdiction, the Judges ſhould proceed to deliver, or bail, the Priſoner, according to the known Laws of the Land, *Magna Charta*, and the other ſix Statutes, inſiſted on; which, he acknowledged remained in full Force: This, he thought fit to ſignify to them, to ſhorten their Debates on this great Queſtion; the Seaſon of the Year, and the great Occaſions of the State, not allowing many more Days for the Continuance of this Seſſion.

The King's Letter to the Lords declaring his Intentions.

Given at our Palace at Weſtm. 12 May, *in the 4th Year of our Reign.*

The Lords communicated this Letter to the Commons; and at a Conference, the 17th of *May*, propoſed the following Addition to their Petition of Right, *(viz.)*

The Lords offer a Clauſe, to be added to the Petition of Right.

We preſent this, our humble Petition to your Majeſty, with the Care, not only of preſerving our own Liberties, but with due Regard to leave entire, that Sovereign Power, wherewith your Majeſty is entruſted, for the Protection, Safety, and Happineſs of the People.

Debates in the Houſe of Commons, upon the Clauſe.

Upon reporting this Addition in the Houſe of Commons, it was ſaid, What is this *Sovereign* Power? By this we ſhall acknowledge a *Regal*, as well as a *Legal* Power: This ſeems to be another diſtinct Power, from the Power of the Law. Sir *Edward Coke* ſaid, This will overthrow all our Petition: There never was a Petition with a ſaving of the King's Sovereignty; *Prerogative* was a Point of the Law; but *Sovereign Power* was no Parliamentary Word: If we grant this, we give a Sovereign Power above all Laws. Sir *Thomas Wentworth* ſaid, If we admit of this Addition, we leave the Subject worſe than we found him: Let us leave all Power to his Majeſty, to puniſh Malefactors; but our Laws are not acquainted with Sovereign Power: We deſire no new Thing

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Thing, nor do we offer to trench on his Majeſty's Prerogative: We muſt not recede from this Petition, either in the Whole, or in Part.

The Lords Reaſons for this Addition.

The Lords, however, at a Conference, inſiſted on this Addition, and ſaid, they intended to give no new Power, which the King had not before; but, as he was a King, he was a Sovereign, and muſt have Power, to be executed, for the Safety of the People; this could never be a Grievance; That both Houſes had already agreed in a Manner, that the King was veſted with Sovereign Power: The Commons had acknowledged it, in a Speech, their Speaker lately made to his Majeſty wherein he ſays, *We have not a Thought to encroach on the King's Sovereignty*; and they might as well therefore add it to their Petition.

The Commons Reaſons againſt it.

To this the Commons anſwered, That their Petition concerned, firſt, the levying Money, by Way of Loan. 2. The Impriſonment of their Perſons. 3. The Unlawfulneſs of billeting Soldiers in private Houſes; and, 4. The exerciſing Martial Law, in Time of Peace.

Theſe Things, they ſaid, they had repreſented to be againſt the Law of the Land, in their Petition: But ſhould they admit theſe Words, *To leave entire that Sovereign Power, wherewith your Majeſty is entruſted*, they ſhould admit a Sovereign Power in the King, above the Laws and Statutes of the Realm; and all the Grievances they complained of, might be exerciſed, and put in Practice again, by virtue of that *Sovereign Power*. This Clauſe, therefore, if it ſhould be admitted, would take away the Effect of every Part of the Petition, and become deſtructive to the Whole.

The Scope of their Petition, was not to mend their Caſe, but to reſtore them to the ſame State they were in before: But if that Clauſe was added, inſtead of mending the Condition of the Subjects, whoſe Liberties of late had been miſerably violated by ſome Miniſters, they ſhould leave them worſe than they found them: They ſhould intimate to their Poſterity, that there was a Truſt repoſed in the King, of *Sovereign Power, ſuperior to all Laws*, which he might exerciſe on any Emergency, and thereby ſuſpend all the Laws and Statutes of the Realm; which was a Truſt, they believed, very far from being deſired by his Majeſty; and which, being tranſmitted to a Succeſſor, of a different Temper, might enable him to alter the whole Frame of the Commonwealth, and diſſolve that Government, which had flouriſhed in this Kingdom for ſo many Ages.

They ſaid, they were very ready to acknowledge, in general Terms, his Majeſty's Sovereign Power; where it did not mean a Power of controuling and ſuſpending thoſe Laws they were petitioning for a Confirmation of, as it muſt do, in this Addition to their Petition. They would maintain his Sovereign Power conſtantly, even to the Hazard of their Lives, if there was Occaſion, as they were bound to do, by their Oath taken, this very Seſſion, in theſe Words: *I*, A. B. *do utterly* teſtify, *and declare in my Conſcience, That the King's Highneſs is the ſupreme ſovereign Governor of this Realm, in all Cauſes*, &c. *And to my utmoſt Power, will aſſiſt and defend all Juriſdictions, Privileges, Preeminences, and Authorities, granted, or belonging to the King's Highneſs, or united or annexed, to the Imperial Crown of this Realm*, &c.

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But ſtill it was not proper, to make this Addition to their Petition of Right; becauſe it would overthrow and annihilate the Right, pretended to by them in the Petition itſelf.

The Lords and Commons agree, to leave out the Addition, and preſent the Petition.

The Lords afterwards agreed to leave out the Addition, and inſiſted only on the Word *Means*, inſtead of *Pretext*, in the Petition; and on the Words *not warrantable*, inſtead of the Word *unlawful:* To which the Commons conſenting, the Petition was preſented to his Majeſty. On the 2d of *June*, the King came to the Houſe of Peers, and the Commons being ſent for up, his Majeſty ſaid,

The King's Anſwer.

I am come hither, to perform my Duty: I think no man can think it long, ſince I have not taken ſo many Days in anſwering the Petition, as you ſpent Weeks in framing it; and I am come hither to ſhew you, that as well in formal things, as in eſſential, I deſire to give you as much Content, as in me lies.

Lord Keeper's Speech.

Then the Lord Keeper ſaid, that his Majeſty took it in good part, that both Houſes generally profeſſed, they had no Intention to diminiſh his Prerogative; and as they had cleared their Intention, ſo he came to clear his, and to ſubſcribe a firm League with his People, which was ever likely to be moſt conſtant and perpetual, when the Conditions were equal: That they could not be in a more happy State, than when their Liberties ſhould be an Ornament and Strength to his Majeſty's Prerogative, and his Prerogative a Defence of their Liberties. For his Part, he was reſolved, to give an Example, in the uſing of his Power, for the Preſervation of their Liberties, that for the future, they ſhould have no Cauſe to complain.

The Petition read.

Then the Petition was read, wherein they recite, that whereas it had been declared, and enacted, by a Statute made in the Reign of King *Edw.* I. entitled, *Statutum de Tallagio non concedendo*, that no Tallage or Aid ſhould be levied, but by Conſent of Parliament: And by a Statute of the 25th *Edw.* III. that no Perſon ſhould be compelled to make any Loan againſt his Will, or charged to pay any Benevolence: And by another Statute, that no Subject ſhould be compelled to pay any Tax, Tallage, or Aid, without Conſent of Parliament. Notwithſtanding which, divers Perſons had been required to lend his Majeſty ſeveral Sums of Money; others ſummoned before the Council, and impriſoned, for their Refuſal: And ſeveral other Charges had been levied on the People, by the Command of his Majeſty, or the Privy Council: And that, whereas by *The Great Charter*, it is declared, That no Freeman ought to be diſſeized of his Lands, or Liberties, but by the Laws of the Land; many of the King's Subjects had, nevertheleſs, of late been impriſoned, without any Cauſe ſhewn, and Bail refuſed on their bringing Writs of *Habeas Corpus:* And that Soldiers and Mariners had been quartered on the King's Subjects, againſt their Will; and Perſons had been tried and condemned by martial Law, who ought to have had the Benefit of the Laws of the Land.

They

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They did, therefore, humbly pray, that no Man might be compelled, for the future, to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like Charge, without common Conſent by Act of Parliament: And, that none be called to make Anſwer, or to take an Oath, or to give Attendance, or be confined, or otherwiſe be moleſted, or diſquieted, concerning the ſame, or for refuſal thereof: And that no Freeman, in any ſuch Manner as is beforementioned, be impriſoned or detained; and that his Majeſty would be pleaſed to remove the ſaid Soldiers and Mariners; and that his People might not be ſo burthened in Time to come: That the aforeſaid Commiſſions, for proceeding by martial Law, might be revoked and annulled; and that, for the future, no Commiſſions of the like Nature might iſſue to any Perſon whatſoever, to be executed as aforeſaid, leaſt by Colour of them, any of his Majeſty's Subjects ſhould be deſtroyed, or put to Death, contrary to the Laws and Franchiſes of the Land.

All which they moſt humbly prayed of his moſt excellent Majeſty, as their Rights and Liberties, according to the Laws and Statutes of this Realm: And, that his Majeſty would alſo vouchſafe to declare, That the Awards, Doings, and Proceedings, to the Prejudice of his People in any of the Premiſſes, ſhould not be drawn into Conſequence, or Example: And, that his Majeſty would alſo be graciouſly pleaſed, for the further Comfort and Safety of his People, to declare his Royal Will and Pleaſure, that in the Things aforeſaid, all his Officers and Miniſters ſhould ſerve him, according to the Laws and Statutes of this Realm, as they tendered the Honour of his Majeſty, and the Proſperity of the Kingdom. To which his Majeſty anſwered by the Lord Keeper.

The King's Anſwer to the Petition.

The King willeth, that Right be done, according to the Laws and Cuſtoms of the Realm; and that the Statutes be put in due Execution; that his Subjects have no Cauſe to complain of any Wrong, or Oppreſſions, contrary to their juſt Rights and Liberties; to the Preſervation whereof, he holds himſelf in Conſcience as well obliged, as of his Prerogative.

It gives no Satisfaction.

Upon Reading the King's Anſwer, in the Houſe of Commons, it appeared to be generally diſliked; and Sir *John Elliot* ſuggeſted, that it was Evaſive, and propoſed the drawing up a Remonſtrance of their Grievances; among which Doctor *Manwaring*'s Sermon was mentioned in theſe Debates, being none of the leaſt: The Commons thereupon charged the Doctor, with advancing arbitrary Doctrines at the Lords Bar; and he was ſentenced to be impriſoned, fined 1000 *l.* ordered to be ſuſpended for three Years, and his Books burnt; and, that he ſhould make a publick Acknowledgement of his Faults at the Bar of the Houſe.

Dr. Manwaring ſentenced for his arbritary Doctrines.

Two Meſſages ſent to the Commons.

His Majeſty, in the mean Time, ſent two Meſſages to the Houſe, to haſten the Diſpatch of the Buſineſs before them, and not ſpend their Time in aſperſing his Adminiſtration; intimating, that he ſhould put an End to the Seſſion on the 11th Inſtant. Theſe Meſſages incenſed the Commons ſtill more; and Sir *John Elliot* was beginning to make ſome Reflections on the Miniſters, when the Speaker ſtood up, and ſaid, There was a Command laid upon him, not to ſuffer them to proceed in this Manner: Whereupon there was a profound Silence, till Sir *Nathaniel Rich* ſtood up, and ſaid, *We muſt ſpeak now, or for ever hold our Peace.* And when ſome ſuggeſted, that Sir *John Elliot*'s former Speeches, probably, had given his Majeſty Offence, the Houſe came to a Reſolution, That every Member of their Houſe was free from any undutiful Speech, from the Beginning of that Parliament to that Day: and the Houſe was immediately turned into a Grand Committee, to conſider of the Safety of the Nation; no Man being ſuffered to go out of the Houſe, but the Speaker. In this Committee ſeveral Members, particularly Sir *Edward Coke* and Mr. *Selden*, charged the Duke of *Buckingham*, with being the Author of all their Grievances; which they were putting to the Vote, when the Speaker returned with a Meſſage from his Majeſty, commanding them to adjourn till the next Morning; and that in the mean Time all Committees ſhould ceaſe.

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The Commons charge the Duke of Bucks, as the Author of their Grievances.

The next Morning the King ſent them another Meſſage, by the Speaker, aſſuring them, he never intended to bar them of their Rights; but only to prevent all ſcandalous Reflections on his Councils, and Actions paſſed: This Meſſage not ſatisfying them, both Houſes addreſſed his Majeſty for a clear and Satisfactory Anſwer to their Petition of Right. Whereupon his Majeſty came to the Houſe of Peers, (*June* 7.) and the Petition being again preſented to him, he anſwered, in a Parliamentary way, *Soit droit comme il eſt deſire:* Which his Majeſty obſerved, was a full Anſwer; and yet no more than he granted them in the firſt; for the Meaning of that was to confirm their Liberties, knowing, according to their own Proteſtations, that they neither meant, or could, hurt his Prerogative; adding, that as he had ſhewn his Readineſs to ſatisfy their Demands; if this Parliament had not a happy Concluſion, the Sin muſt be theirs: And they were ſo good afterwards, to grant his Majeſty five Subſidies, and to confirm the five Subſidies granted by the Clergy. And now, it was imagined all Differences were compoſed: But, a little after, the Commons preſented a Remonſtrance to the King, ſhewing, that both the Church and Common-wealth were ſtill in great Danger, the Laws not being put in Execution, againſt the *Roman Catholicks:* Many of whom were in great Favour at Court; particularly the Counteſs of *Buckingham* (the Duke's Mother) by whoſe Protection, their Number, Power, and Inſolence, encreaſed; That *Arminianiſm* was encouraged by Doctor *Neale*, Biſhop of *Wincheſter*, and Doctor *Laud* Biſhop of *Bath* and *Wells*, who, though Proteſtants in Appearance, were in Reality Jeſuits; recommending it to the King, to encourage painful Orthodox Preachers, obſerving that ſuch were too much diſcountenanced: They again reminded his Majeſty, of the illegal Methods that had been taken to raiſe Money by way of Loan; repreſented the Danger of keeping a Standing Army on Foot; the Terror they were under from his Majeſty's *German Troops*; the Illegality of his taking Ton-

Both Houſes addreſs the King, for a more ſatisfactory Anſwer to their Petition.

He gives a full Anſwer.

The Commons preſent a Remonſtrance of their Grievances.

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nage and Poundage; the Miſcarriages of the Iſle of *Rhee*; the Weakneſs of his Majeſty's Forts; the Deſtruction of Trade by the *French* and *Spaniſh* Privateers; and the Loſs of the Sovereignty of the Narrow-Seas: The principal Cauſe of all which Evils, they conceived to be the exceſſive Power of the Duke of *Buckingham*, and the Abuſe of that Power; ſubmitting it to his Majeſty's Wiſdom, Whether it was ſafe for himſelf, or his Kingdoms, that ſo great a Power by Sea and Land ſhould be repoſed in him; intimating, that they could not be ſatisfied, while he remained in Poſſeſſion of the great Offices he enjoyed, and was continued in his Majeſty's Councils.

Accuſe the Duke of Bucks, *as the Author of them.*

The King's Anſwer.

To which the King anſwered, *He little expected ſuch a* Remonſtrance, *after he had paſſed* their *Petition of Right*; and ſoon after he ſent them a Meſſage, that he ſhould put an End to the Seſſion, the 26th Inſtant (*June*:) Whereupon they immediately ſet about framing another Remonſtrance, againſt the King's taking Tonnage and Poundage; wherein they beſeech him, to forbear receiving it; and, that he would not take it ill, if his Subjects refuſed paying Tonnage and Poundage for the future; telling him, they intended to prepare a Bill, to impower his Majeſty to receive it, if they had been permitted to ſit longer.

They reſolve on another Remonſtrance.

But the King, underſtanding they deſigned to clog the Bill with many Reſtrictions, and to continue theſe Duties but from Year to Year, whereas his Predeceſſors enjoyed them for Life, his Majeſty did not think fit to encourage the Bill; and, in order to prevent the Commons preſenting their ſecond Remonſtrance, came to the Houſe ſooner than they expected, and put an End to the Seſſion, having firſt made a Speech to both Houſes: Wherein he deſired they would obſerve, that by granting their Petition of Right, he had not granted them any new, but only confirmed their ancient Rights and Liberties: And as for Tonnage and Poundage, it was a Thing he could not want; it was never intended to be asked by them in that Petition, nor did he ever intend to part with it; of which he directed the Judges to take notice. Concluding, that the Houſes of Parliament, neither jointly, or ſeparately, had any Power either to make, or declare, a Law, without his Conſent, what new Doctrines ſoever had been taught. After which the Lord-Keeper declared the Parliament to be prorogued to the 20th of *October*.

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The King's Speech on proroguing the Parliament.

The following Proceedings relating to the ſame Subject (viz.) *The Bailing of Gentlemen, on bringing their Writs of* Habeas Corpus; *I ſhall defer my Remarks, till I have gone through thoſe Caſes.*

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Proceedings againſt WILLIAM STROUD, Eſq; WALTER LONG, Eſq; JOHN SELDEN, Eſq; and others, on bringing their Writs of *Habeas Corpus*, to be bailed in the *King's-Bench*, in *Eaſter* Term, 1629, 5 *Car.* I.

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Stroud's Habeas Corpus.

Stroud, &c. ſummoned before the Council.

THE Privy-Council, on the 3d of *March*, 1628. iſſued a Warrant, directed to *Denzil Holles* Eſq; Sir *Miles Hobart*, Sir *John Elliot*, Sir *Peter Hayman*; *John Selden*, *William Coriton*, *Walter Long*, *William Stroud*, and *Benjamin Valentine*, Eſqrs; commanding their perſonal Appearance, before the Board, the Day following: At which Time *Holles*, *Elliot*, *Coriton*, and *Valentine*, appearing, and being examined, concerning the Diſorders committed by them in the Houſe of Commons, they refuſed to anſwer, as to any thing that had been ſaid or done in their Houſe, and were thereupon committed; and Warrants iſſued, for Sealing up the Studies of *Holles*, *Selden*, and *Elliot*: *Long* and *Stroud* abſconding ſome time, a Proclamation was iſſued for apprehending them; and they afterwards ſurrendered: His Majeſty intending to proceed againſt theſe Gentlemen in the Star-Chamber, the Attorney-General, by his Majeſty's Directions, propoſed ſeveral Queries to the Judges, concerning the Legality of ſuch a Proceeding againſt Parliament-Men, for what had been ſaid and done in the Houſe: But it being afterwards reſolved to drop the Proceedings in the Star-Chamber, I ſhall take no further Notice of them here.

Refuſe to anſwer, as to what had been done in the Houſe. And are committed.

They bring their Writs of Habeas Corpus.

In the mean Time, the Priſoners remaining in Cuſtody, Mr. *Stroud* brought his Writ of *Habeas Corpus*, in *Eaſter* Term, 5 *Car.* I. to be admitted to Bail; and appearing in the Court of King's-Bench, the Return of the *Habeas Corpus* was read, importing, that *William Stroud*, Eſq; was committed by Virtue of a Warrant under the Hands of twelve of the Lords of the Privy-Council; which Warrant was in the following Words:

The Return.

You are to take Knowledge, That it is his Majeſty's Pleaſure and Commandment, that you take into your Cuſtody the Body of William Stroud, *Eſq; and keep him cloſe Priſoner, till they receive other Order, either from his Majeſty, or this Board: For ſo doing, this ſhall be your Warrant.* Dated 2 April, 1629. and directed, *To the Marſhal of the* King's-Bench, *or his Deputy.*

The Warrant for their Commitment.

That he was alſo detained in Priſon by Virtue of a Warrant under his Majeſty's Hand, of the following Tenor:

C. R.

Whereas you have in your Cuſtody the Body of William Stroud, *Eſq; by Warrant of the Lords of our Privy-Council, by our ſpecial Command, you are to take notice, that this Commitment was for notable Contempts by him committed againſt our ſelf and our Government, and for ſtirring up Sedition againſt Us, for which you are to detain him in cloſe Cuſtody, and to keep him cloſe Priſoner, until our Plea-*

A ſecond Warrant.

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ſure be farther known concerning his Deliverance.

Given at *Greenwich*, 7 *May*, 1629. in the fifth Year of our Reign.

Directed, *To the Marſhal of our Bench for the Time being*; who returned, *Et hæ ſunt cauſæ captionis & detentionis prædict. Gulielmi Stroud.*

Walter Long Eſq; brought his Writ of *Habeas Corpus* alſo, at the ſame Time, whoſe Caſe was exactly the ſame.

Stroud's *Counſel argues the Return inſufficient.*

Mr. *Ask*, of Counſel with Mr. *Stroud*, argued, that the Return was inſufficient; for the firſt Warrant mentioned in it, being from the Lords of the Council, ſhewed no Cauſe of Commitment, which was expreſly contrary to the Reſolution of Parliament, and the Petition of Right granted by this King: And that the ſecond Warrant by the King was inſufficient; becauſe the King himſelf could impriſon no Man: He objected alſo, that the Commitment was too general and uncertain, being for *notable Contempts:* There were Contempts, he ſaid, of various Natures, and it appeared not to the Court, of what kind this Contempt was; and, as to the Word *notable*, every Contempt againſt the King was notable. The Words *againſt our Government* were likewiſe uncertain; a Contempt of any Court being a Contempt of the King and Government. The Words, *for ſtirring up Sedition againſt Us*, he obſerved, likewiſe, were indefinite and general: This Term was generally uſed adjectively, as for *ſeditious Books*, or *ſeditious News*. The Statute of 1 and 2 *Phil. & Mar.* ſays, If any Perſon ſpeak any falſe, ſeditious, or ſlanderous News of the Queen, he ſhall loſe his Ears, and pay a Fine of 100*l.* So that the Penalty of ſuch Sedition, was but a Fine, which is no Cauſe of Impriſonment without Bail: And what was the Sedition intended here, was not to be gathered from the Words, they were ſo general: As to the Words againſt *Us*, they were redundant; for every Sedition was againſt the King; and having cited ſeveral Caſes, to ſhew that Pleadings had been held vicious for the Generality and Uncertainty; as the 18th of *Edw.* III. where a Man was indicted *quia furatus eſt equum*, and did not ſay *felonicè*; whereupon it was adjudged ill, 29. *Aſſ.* 45. A Man was indicted, for that he was *communis latro*; and the Indictment held vicious, becauſe it was too general: He concluded with the Caſe of *Peak* and *Paul*, *Hil.* 33 *Eliz.* where the Defendants ſaid of the Plantiff, *Thou art a mutinous and ſeditious Man, and maintaineſt Sedition againſt the Queen*; and the Words were adjudged not actionable.

The Argument of Mr. Long's *Counſel, againſt the Return.*

Mr. *Maſon*, of Counſel with Mr. *Long*, alſo argued, That a Commitment by the King, without ſhewing Cauſe, could not be good, ſince his Majeſty's granting the Petition of Right. But what he principally inſiſted on, was, that *Sedition* was not any determined Offence in our Law; there was no Crime in Law called *Sedition:* That the Civilians defined it to be *Seditio*, or *ſeceſſio*, *cum pars Republicæ contra partem inſurgit:* So that Sedition, according to them, was nothing but Diviſion: That *Bracton* and *Glanvile* uſed the Word, Seditio, generally: That 25 *Edw.* III. which declared what Offences ſhould be Treaſon, did not mention Sedition amongſt them, and, conſequently, Sedition could not be interpreted Treaſon at this Day. To raiſe Tumults was Sedition; and yet one guilty of this Offence, was indicted only for a Treſpaſs, *Trin.* 21 *Edw.* III. *Rot.* 23. *B. R. Garbart*'s Caſe. *Pope* was appealed by the Wife of *J. S.* becauſe he feloniouſly and ſeditiouſly murdered *J. S.* from whence it appeared, that Sedition was not to be taken as a Subſtantive; but might be applied adjectively to Treaſon, Treſpaſs, or other Offences. The 35 *Eliz.* cap. 1. is made againſt ſeditious Sectaries, that abſent themſelves from Church, the Penalty whereof was 10*l. per* Month. And *Coke* 4. 13. Lord *Cromwell*'s Caſe, the Word Seditious is referred to Doctrine; from whence it appeared the Word was variouſly taken, according to the Subject treated of: That there were Offences of a higher Nature than Sedition, that were not Treaſon. 17 *R.* II. cap. 8. Inſurrections of Villians and others, is made Treaſon; which ſhewed, that before that Act it was not Treaſon; and that Act was repealed. By the Statute of 3 & 4 *Edw.* VI. cap. 5. To aſſemble the People to alter the Laws, is made Treaſon, if they continue together an Hour after Proclamation made; but if they diſperſe upon Proclamation made, it is not Treaſon: And if the *ſtirring up Sedition againſt the King*, was not Treaſon, there could be no Colour for detaining his Client, Mr. *Long*, in Priſon; and therefore he prayed, he might be diſcharged.

Berkley's *Argument, for the Sufficiency of the Return.*

Berkley, the King's Serjeant on the other Side, argued, That a Commitment, either by the King, or the Privy-Council, was good: It was every Day's Experience. 33 *Hen.* VI. 28. *Poignes*'s Caſe was expreſs in it: The Petition of Right alſo admitted, they might commit: The Grievance there was, becauſe the particular Cauſe of Commitment, was not expreſſed. It was not, indeed, fit for the King in Perſon to arreſt a Man; but he might command another to do it. This Impriſonment, before Conviction, is not a Puniſhment for any Offence, but rather an Arreſt, or Reſtraint, to prevent further Inconveniences. 14 *Hen.* VII. 8. A Juſtice of Peace may arreſt Men riotouſly aſſembled, for Prevention of further Miſchief. If a Houſe was on Fire, every Man might pull down the next, to prevent further Damage: So, where there were Incendiaries in the State; they ought to be reſtrained and ſuppreſſed, leſt others ſhould be ſtirred up by them to ſubvert the Government. 22 *Aſſ.* 56. and 22 *Edw.* IV. 45. In falſe Impriſonment, the Defendant juſtified, becauſe the Plaintiff was mad, and out of his Wits, and having done ſome harm, he bound and beat him, to avoid farther Harm; and the Juſtification was held good: So in Matters of Government, to avoid Commotions, the King ought to uſe his coercive Power againſt Men that are enraged, leſt they throw all into Confuſion.

As to that Objection, that the Return was general, and uncertain, he obſerved, That the Counſel for the Priſoners had divided the Words of the Return, which was an offering Violence to it; for an Expoſition ought not to be made by Fractions, but upon the whole Matter

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ter: Though the *ſtirring up Sedition againſt Us*, might be but an Offence fineable; yet, joined with the former Words, ſhewed it to be an Offence of the higheſt Nature; and, although Sedition itſelf might be too general an Expreſſion, yet, where it was *Sedition againſt Us and our Government*, it was particular enough, and could not be miſunderſtood: And, beſides, this being in the Caſe of a Return upon a *Habeas Corpus*, ſuch a preciſe Certainty was not required as in Indictments and Pleadings; therefore that Objection, that Sedition was not a Law Term, and that no Indictment for Sedition generally was ever ſeen, was of no Weight, though in ſome Caſes an Indictment for Sedition might be good; for it might amount to Treaſon. He agreed in *Peak*'s Caſe, that for the Words, ſeditious Fellow, no Action lay; becauſe thoſe Words did not imply an Act done, but only an Inclination to do it: But, if a Man had uttered Words, importing, that Perſon had committed Sedition, they would be actionable, as was reſolved in *Philips*'s and *Badby*'s Caſe, 24 *Eliz. Coke* 4. 19. *Thou haſt made a ſeditious Sermon, and moved the People to Sedition this Day*, adjudged actionable: He agreed to *Garboyl*'s Caſe, *&c.* for in thoſe Caſes Sedition was only taken adjectively, and ſhewed an Inclination only to do a ſeditious Act; and ſo Sedition might be applied to other Offences beſides Treaſon: That the Word Sedition is found in ſeveral Statutes; and *Bracton*, in his Book *De Corona*, ſays, If any by raſh Attempt, plotting the King's Death, ſhould act or cauſe any Act, to the Sedition of the Lord the King, or of his Army, it is Treaſon: And *Glanvile* ſays, To do any Thing in Sedition of the Kingdom, or of the Army, is High Treaſon. And *Britton*, *fol.* 16. It is High Treaſon to diſinherit the King; and Sedition tendeth to the Diſinheritance of the King: From whence it appears, that the Word Sedition is no Stranger to our Law; and, that ſuch Sedition as ſevers the People from the King, is Treaſon: That the Sedition mentioned in the Return might be High Treaſon, and yet the King might make it an Offence fineable: For he might proſecute the Offender in what Manner he pleaſed; and if it was Treaſon, the Offender was not bailable: That the Word Sedition was never taken in a good Senſe; it was always coupled with Treaſon, Rebellion, Inſurrection, and ſuch heinous Offences; and therefore prayed, the Priſoner might be remanded.

Littleton's *Argument, for Mr.* Selden.

In *Trinity* Term, 5 *Car.* I. Mr. *Selden* being in like Manner brought into the Court of King's Bench, by *Habeas Corpus*, and his Caſe being exactly the ſame with that of Mr. *Stroud*, Mr. *Littleton*, (afterwards Lord Chief Juſtice of the Common-Pleas, and Lord-Keeper) of Counſel with Mr. *Selden*, moved, that his Client might be bailed. ---- He ſaid, he did admit that the King might commit a Man; and that a Man committed by the King was not repleviſable by the Sheriff, but he was evidently bailable by that Court, as appeared by the Petition of Right, and the Anſwer to it; and therefore he ſhould labour that Point no further: But lay down, as a Ground of his following Argument, that as Offences were of two Natures, either Capital, or as Treſpaſſes; ſo they were puniſhed in two Manners, *viz.* Capitally, or by Fine, or Impriſonment. For Offences of the firſt Kind, ſuch as Treaſon, and the like, Impriſonment was only for the ſafe Cuſtody of the Offender; but for Miſdemeanors of the ſecond Nature, Impriſonment was impoſed on him as a Puniſhment. Then he laid it down as a Ground, That no Freeman that is impriſoned, only for Miſdemeanors before Conviction, could be detained in Priſon without Bail, if it was offered; unleſs in ſome particular Caſes, where it was ordained by a particular Statute.

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That the Warrant of the Privy-Council, which ſignified the King's Pleaſure to commit the Priſoner, might be a good Ground for his Commitment; but it was no Ground for detaining him without Bail: And this the King had acknowledged, as the ancient Right of the Subject, in the Petition of Right, and therefore was not now to be diſputed: That the Warrant of the King, as certified in the Return, contained no ſufficient Cauſe for detaining the Priſoner: The ſole Queſtion was, *If the Return contained in it any Capital Offence*; for if it contained only a Treſpaſs, or Miſdemeanor, then the party was bailable. Then he conſidered the ſeveral Parts of the Return; the firſt Part whereof was, *For notable Contempts by him committed againſt our Self, and our Government:* But all Contempts, he obſerved, were, mediately or immediately, againſt the King, and his Government; and the Word *notable*, ſignified no more than notorious and manifeſt: It was but an emphatical Expreſſion of the Nature of the thing, and altered it not. *Againſt Us:* All Riots, Routs, Batteries, and Treſpaſſes, were againſt the King's Crown and Dignity; and the Nature of the Contempt ought to be expreſſed, that the Court might judge thereof: For Contempts in general, before Conviction, the Party could not be impriſoned without Bail.

The ſecond Part of the Return was, *for ſtirring up Sedition againſt Us*, which the other Side had ſaid, was ever taken in the worſt Senſe: That was true; but it did not follow from thence, that the Party which committed it, was not bailable. *Sedition*, in this Return, muſt be underſtood to be either as Treſpaſs, or High Treaſon: He ſhould conſider, therefore, 1. In what Senſe the Word *Sedition* was uſed. 2. How it ſhould be expounded here; and 3. what Senſe the Words *againſt Us* ſhould have here.

That Sedition was not to be found in the Diviſion of Offences in our Law, but as it was mingled and coupled with other Offences: Routs, Riots, and unlawful Aſſemblies, were much of the ſame Nature with it, and well expreſſed the Nature of Sedition: That the *Engliſh* Word was taken from the *Latin*, *Seditio*, which was uſed in the Bible, by Poets, Hiſtorians, and Orators, for Tumult, Uproar, or confuſed Noiſe: In *Tacitus*, it ſignified a Mutiny of the Army, when they repined againſt their Captain. In *Italian*, the elder Son of *Latin*, Sedition and Diſcord were all one. In the Bible *Seditio* is tranſla-

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ted *chiding*, or *murmuring*; *In Seditione Corah*, is engliſhed, *in the Company of Corah: Facta eſt ergo ſeditio in Ephraim*, is tranſlated, *The Men of Iſrael gathered themſelves together:* In *Acts* xv. 2. *Facta eſt ergo Seditio*, is tranſlated, *Diſſenſion*, and *Diſputation*; and *Acts* xxv. 5. *Tertullus*, the Orator, accuſes *Paul*, for moving *Sedition*; and the ſubſequent Words are, *a Ring-Leader of the Sect of the Phariſees*; ſo that his Sedition was but a Schiſm: The Lord *Bacon* has an Eſſay on Sedition, the Title whereof is, *Of Seditions and Tumults*; which ſhewed they were of the ſame Nature. And there is a Prayer in the Litany, *From Sedition and Hereſy*, &c. where Sedition ſignifies Schiſm, or the being of a Sect. In like Manner, in the Act againſt *Lollards*, 2 *Hen.* IV. *cap.* 16. Sedition is taken for Diſſenſion and Diviſion in Doctrine, which is not made Treaſon by that Statute. 1 *Phil.* & *Mar.* againſt ſeditious Words, makes the Puniſhment only Pillory, or a Fine of 100 *l.* 13. *Eliz.* c. 2. makes the ſeditious bringing in of the Pope's Bulls Treaſon, which implies it was not ſo at Common Law. 23 *Eliz.* c. 2. enacts, That writing, or printing any Book, containing ſeditious and ſlanderous matter, to the ſtirring up Rebellion, was Felony; and in an Indictment on that Statute, *Coke's Entries*, *f.* 352, 353. there are the Words *Rebellionem & ſeditionem movere*; and yet it was but Felony.

Mich. 33 *Eliz.* *Cawdry's* Caſe, *Coke's* 5th Report, *p.* 1. Sedition and Schiſm are deſcribed thus: As Schiſm is a Separation from the Unity of the Church, ſo Sedition is a Separation from the Unity of the Commonwealth: And another Author ſays, a ſeditious Perſon differs from a Schiſmatick; becauſe the one oppoſeth the Spiritual Truth, the other the Temporal: And, as Schiſm of itſelf is not Hereſy, ſo Sedition, without other Adjuncts, is not Treaſon: And whereas it is objected, that both *Bracton* and *Glanvile* made Sedition Treaſon: He granted it; but they were obſcure: Theſe Authors neither remembered Law nor Language: And ſhall that which ſignifies *ſeditio Regis*, or *tumultus Regis*, be the ſame in ſenſe with *ſeditio contra Regem?* Though theſe Authors reckon Sedition amongſt the Crimes *læſæ Majeſtatis*, they were old and obſelete, and not looked upon as Authorities in Law; as in *pl.* 356. and *Coke* 8. 35. But, if they were, they had them ſometimes on their Side; for *Glanvile* ſays, in his fourth Book, That a Man accuſed of ſuch a Crime ſhall be bailed. And *Bracton* ſays, If no Accuſer appears, they ſhall be ſet at Liberty: *Hengham* alſo reckons the Breach of the Peace amongſt the Crimes *læſæ Majeſtatis*; ſo does *Glanvile*, and *Fleta*, a Follower of *Bracton*, who tranſcribes from him, and calls Sedition *Seductionem* of the Lord the King. By the Civil Law, indeed, which is much cited by thoſe old Authors, Sedition is Treaſon; but we are not governed by the Civil Law: And he confidently affirmed, that there could not be ſhewn any Record, Book, or Statute, after the making of the Statute of 25 *Edw.* III. in which Sedition is taken to be a Capital Offence: But admitting that Sedition imported a greater Offence than a Tumult, yet there was no Colour to ſay it was Treaſon, it not being contained in the 25 *Edw.* III. which had aſcertained what ſhould be Treaſon: Beſides, the Words *raiſing Sedition againſt Us*, could not be intended Treaſon; for if it had been ſo, the King would not extend a Fault beyond the Magnitude thereof, ſo he would give to every Offence its true and genuine Name: The King ſtiles himſelf *Us* in his Writs; and every Diſobedience to a Writ may be ſtiled *Sedition againſt Us:* Riots, Routs, and unlawful Aſſemblies, might well be called *Sedition againſt us:* But for ſuch Offences, a Man ſhall not be reſtrained of his Liberty upon an *it may be.* That ſuch a Return was neceſſary, by which the Court might be truly informed of the Offence; for the Writ of *Habeas Corpus* was, to ſubmit and receive what the Court ſhall ordain. Though he would not affirm, that it ought to be as certain as an Indictment; yet out of the Return the Subſtance of the Offence ought always to appear: The Return ought to have ſo much Certainty in it, that, if it be falſe, the Party grieved may have his Action on the Caſe: And, that the Court may judge of the Legality of the Cauſe.

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Then he conſidered the Parts of the Return as they were coupled together ---- *for notable Contempts by him committed againſt Our Self, and Our Government, and for ſtirring up Sedition againſt Us.* Here the King joins Sedition with notable Contempts; and in a manner ſays, that Sedition was one of thoſe notable Contempts mentioned in the firſt Part of the Return; ſo that he made it but a Contempt. Then as to the Generality and Uncertainty of the Return. *M.* 9 *Edw.* III. *Roll.* 39. *B. R. Peter Ruſſel's* Caſe is expreſs in the Point. The Return was, that he had committed divers Seditions againſt our Lord the King; and for that Cauſe he was detained, and no other: And becauſe the Return mentioned not, what Sedition in ſpecial, he was bailed, but not diſcharged: And he deſired the Bailment of the Priſoner only, and not his Deliverance. He deſired alſo, it might be obſerved, that in *Ruſſel's* Caſe, there was an actual Sedition raiſed againſt the King; here the Priſoner was only charged with ſtirring up Sedition. 33 *Eliz.* it was reſolved by all the Judges of *England*, as appears by Judge *Anderſon's* Book, which was produced in Parliament, 3 *Car.* That all Men committed by the Privy-Council are bailable, if the Commitment be not for High-Treaſon: And had the Accuſation, mentioned in *Ruſſel's* Caſe of Sedition, been an Accuſation of Treaſon, the Judges ought not to have bailed him of Right: And he ſtill inſiſted, That the Priſoner being committed before Conviction of any Offence, and it being impoſſible to underſtand this Offence to be Treaſon, was bailable here; for which he offered two further Reaſons: 1. The Return here was for Sedition, and there was an Information in the Star-Chamber againſt the Priſoner for ſeditious Practices againſt the King and his Government: Though he did not affirm they were the ſame Offence, there was a Probability

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bility they were the ſelf-ſame; and, if they were the ſame, the Sedition here intended was not Treaſon, and ſo the Party was bailable: 2. The Priſoner was ready at that Bar, the laſt Term, and a Grand-Jury and the King's Counſel preſent; and yet no Indictment was preferred againſt the Priſoner: Which induced him to be of Opinion, that the Offence mentioned in the Return was not Treaſon, or ſo great as was pretended; and, upon the whole, concluded, that the Priſoner ought to be bailed.

The reſt of the Priſoners rely on Mr. Littleton's *Argument.*

Sir *Miles Hobart*, and *Benjamin Valentine*, and *Denzil Holles*, Eſquires, being brought to the Bar, the ſame Day, by virtue of their reſpective Writs of *Habeas Corpus*, would not give the Court the Trouble of hearing their Counſel, but all declared, they would rely upon the Argument made Mr. *Littleton*.

The Attorney-General's Argument, for the Sufficiency of the Return.

Sir *Robert Heath*, Attorney-General, argued, on the other Side, that the return was good, and the Priſoners ought not to be bailed; for that within the Return, there appeared good Cauſe of their Commitment, and of their detaining alſo. The firſt Warrant, indeed, was general, that it was by the Command of the King; and this, in former Times, was held a good Return, when due Reverence was paid to Government; but, *tempora mutantur*. However, he was ſtill of Opinion, that the firſt Commitment might be general; for if, upon Commitment, the true Cauſe ſhould be revealed to the Goaler, the Fact would be divulged, and the Accomplices eſcape Puniſhment. When the Cauſe was returned into Court, more Certainty was requiſite; for then, as had been objected, ſomething ought to be expreſſed, to which the Party might anſwer, and upon which the Court might ground their judgment. And to prove this, the Petition of Right had been inſiſted on; though he did not think the Law was altered by that Petition. The Law remained as before, as appeared by the King's Anſwers to it, and by the King's Speech, the 26th of *June*, 1628. where he ſays, *It muſt not be conceived, I have granted any new, but only confirmed the ancient Liberties of my Subjects*; and the People ought not to ſtretch the Words beyond the King's Intention. The Opinion of the Sages of the Law formerly was, that a Perſon committed by the Command of the King, or Council, without Cauſe ſhewn, was not bailable. The firſt Commitment was always held to be lawful, although it was by a Juſtice of Peace, or a Conſtable, and general: But here was a Commitment by the Council, and a particular Cauſe returned, ſufficient for detaining the Priſoners.

It had been objected, indeed, that *Sedition* was not a Word known in our Law; but it could not be miſunderſtood in this Place, where it was for *ſtirring up Sedition againſt Us*. The Word had various Acceptations, 'twas true, according to the Subject treated of: But here the Words *againſt Us* fixed the Senſe. Mr. *Littleton* had ſhewn, how *Tacitus* uſed it, and the Acceptation of this Word in ſeveral Places of Scripture, which Mr. Attorney conceived made for him, as *Numb.* xx. 3. *populi verſi ſunt in ſeditionem*, where *ſeditionem* is engliſhed *murmuring*; and the Fact was evidently High-Treaſon, againſt their Governor, and againſt God himſelf. *Numb.* xxvi. 9. *In ſeditione Corah*, it was manifeſt there was a great Inſurrection, *Judg.* xii. 1. *Facta eſt ergo ſeditio in Ephraim*, the *Ephraimites* roſe againſt *Jephtha*, who was then their Judge and Governor, and conſequently were in Rebellion. *Acts* xix. 40. The Town-Clerk there knew not how to anſwer for *that Day's Sedition*, or Inſurrection. *Acts* xxiv. 5. *Tertullus* accuſed *Paul* of Sedition, as a peſtilent Fellow, and an Enemy to the Government, though in reality he taught the Goſpel.

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It had been objected, that if Sedition was a Capital offence, it muſt be Treaſon; but as it was not compriſed within the Statute of 25 *Edw.* III. it could not be Treaſon. To which he anſwered, that upon an Indictment for Treaſon, ſuch a Sedition as this might be given in Evidence, and perhaps prove Treaſon. The Return was not, that he was ſeditious, which ſhewed only an Inclination; but that he ſtirred up Sedition, which might be Treaſon, if the Evidence would bear it. Then he cited a great many Acts of Parliament, where the Word Sedition was uſed; and ſhewed, that it was always coupled with Inſurrection, or Rebellion, which proved, that Sedition was a Word well known in our Law, of dangerous Conſequence, and which could not be expounded in a good Senſe: And from theſe Statutes it appeared, that there was but a narrow Difference, between Sedition and Treaſon, if there was any Difference at all.

It was objected alſo, he obſerved, that every Impriſonment was for Cuſtody, or Puniſhment; and if it was for Cuſtody, the Party, upon tendering ſufficient bail, was bailable: But this was not always true; for Impriſonment for Cuſtody was for two Intents; one, that the Party which had offended, ſhould not avoid the Judgment of the Law. 2. That he ſhould do no Miſchief in the Interim, before his Trial: And though it had been ſaid, that the Party bailed was, notwithſtanding, impriſoned, he denied it: Nor ſhould the Bail ſuffer the like Puniſhment as ought to have been inflicted on the Party; the Bail could only be impriſoned. Serjeant *Berkley* had juſtly called a ſeditious Man, an Incendiary in the Government; and, as a common Incendiary, ſuch an one ought to be reſtrained of his Liberty. A mad man might be reſtrained, on account of the Hurt he might do himſelf, and others, while he was at Liberty: A ſeditious Man was a mad Man in the publick State and Commonwealth, and therefore ought to be reſtrained: A Leper might be impriſoned, leſt his Leproſy ſhould infect others. The Infection of Sedition was as dangerous as any Diſeaſe, and therefore it was not wiſe, or ſafe, to ſet ſeditious Men at Liberty, by admitting them to Bail.

And though *Ruſſel*'s Caſe, *M.* 9. *E.* 3. *Roll.* 39. had been objected to be in Point, it was not to the Purpoſe; for the Commit-

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ment was by a Juſtice of *North-Wales*; and the Party was accuſed of Seditions and Indecencies, where the latter Word qualified the former: But here the Detainment was by the King himſelf, for ſtirring up Sedition; and he deſired, it might be obſerved, that *Ruſſel* came into Court upon a *Habeas Corpus*, 20 *Sept.* but was not delivered till *Hillary* Term following; and that after it was found, he was not guilty of the Offence, with which he was charged.

As to the Objection, that the Parties had been a long Time impriſoned, and no Proceedings yet againſt them; it was well known, there had been Proceedings againſt them, and they declined to anſwer: And the King intended to proceed farther againſt them, in convenient Time: Beſides, more than three Months were requiſite for the Preparation of ſuch Proceedings: Some of the Offenders alſo had been delivered, as *Coryton*, and Sir *Peter Hayman*: And if any Injury was done the Priſoners, they themſelves were the Occaſion of it, by refuſing to ſubmit themſelves to the King.

That the Reſolution of the Judges, in 34 *Eliz.* had been much relied on: But that Reſolution was, that the Cauſe ought to be certified generally, or ſpecially; and here the general Cauſe was *ſpecified, if the ſpecial Cauſe was not.* Upon the whole, he held, the Bailment of the Priſoners was left to the Diſcretion of the Court. He had ſhewed them the Diſcretion of their Predeceſſors; and if any Danger appeared in their Bailment, he was confident the Court would not bail them: They would firſt conſult the King, who would ſhew them where the Danger lay, and prayed they might be remanded.

The King's Letter to the Judges, acquainting them, the Priſoners were removed to other Priſons.

A Day being afterwards appointed, for the Judges to deliver their Opinions, they received a Letter from his Majeſty, the Night before, importing, that whereas, by his ſpecial Command, Sir *Miles Hobart*, *Walter Long*, and *William Stroud*, had been lately removed from their ſeveral Priſons, and ſent to the *Tower* of *London*; and underſtanding, it was reported, he had done it to decline the Courſe of Juſtice, he thought fit to let them know the Occaſion thereof, and why he commanded, that theſe, and the other Priſoners, ſhould not come before them, *viz.* That he had heard, moſt of them had carried themſelves inſolently, and unmannerly, both to his Majeſty, and their Lordſhips; and he could not but reſent the Diſhonour that was done to himſelf, and his Courts of Juſtice, ſo far, as to let the World know, how much he diſliked it: And underſtanding, that their Lordſhips, and the reſt of the Judges, had not yet reſolved the main Queſtion, he did not think the Appearance of the Priſoners neceſſary; and until he found their Temper and Diſcretion to be ſuch, as might deſerve it, he was not willing to afford them Favour; however, he was content, that *Selden* and *Valentine* ſhould attend them to Morrow.

Given at *Greenwich*, 24 *June*, in the 5th Year of our Reign.

A ſecond Letter.

About three Hours after the Receipt of this Letter, the Judges received another from his Majeſty, importing, that upon mature Conſideration, he had reſolved, that all the Priſoners ſhould receive the ſame Treatment, and none of them ſhould come before the Court, until he had Cauſe to believe, they would expreſs more Modeſty and Civility, both towards himſelf, and their Lordſhips, than at their laſt Appearance they did.

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The Priſoners not being brought to the Bar, according to the Rule of Court that had been made for that Purpoſe, Proclamation was made, for the Keepers of the ſeveral Priſons to bring in their Priſoners: Whereupon, the Marſhal of the *King's-Bench* (none of the other Keepers appearing) informing the Court, that Mr. *Stroud*, who was in his Cuſtody, was removed the Day before, to the *Tower* of *London*, by the King's own Warrant: And it appearing, the reſt of the Priſoners alſo had been removed from the Priſons where they were before, their Counſel moved the Judges, that they would, however, deliver their Opinions in the Caſe: But were anſwered, that could be to no Purpoſe; for the Priſoners being abſent, they could not be bailed, delivered, or remanded: And the Gentlemen were continued in Priſon, during the long Vacation that followed: But before the End of it, the Judges received Letters from the Privy-Council, requiring them to come to Town by *Michaelmas-Day*, becauſe his Majeſty had urgent Occaſion for their Service; and being come up accordingly, the next Morning, about four a-Clock, Letters were brought from Mr. *Trumbal*, Clerk of the Council, to the Lord Chief Juſtice, that he, and Judge *Whitlock*, ſhould attend the King, at *Hampton-Court*, that Morning, as ſoon as conveniently they could: And the Chief Juſtice, and Judge *Jones*, attending his Majeſty accordingly, he let them know, that he was content the Gentlemen ſhould be bailed, though they were ſo obſtinate, that they had refuſed to petition for their Liberty, and declare, they were ſorry they had offended him; but ſaid, he was reſolved to proſecute them at Common Law, and drop the Proceedings in the *Star-Chamber*. Theſe Judges, it ſeems, were of Opinion, that the Offence was not Capital; and that, by Law, the Priſoners ought to be bailed, on giving Security for their good Behaviour: Whereupon, his Majeſty ſaid, *He would never be offended with his Judges, ſo as they dealt plainly with him, and did not anſwer him by Oracles and Riddles.*

The Gentlemen continued in Priſon.

The Judges attend the King.

He is content the Priſoners ſhould be bailed.

Mr. *Maſon* moving the Judges of the *King's-Bench*, the firſt Day of *Michaelmas* Term, for their Reſolution in relation to the Priſoners, the Court declared, they were unanimous in their Opinion, that they might be bailed, finding Sureties for their good Behaviour, as was done in *Ruſſel's* Caſe, 9 *Edw.* III. which had been ſo often cited. To which Mr. *Selden* anſwered, in the Name of himſelf, and the reſt of the Priſoners, that they had their Sureties ready for Bail, but not for their good Behaviour; and deſired Bail might be firſt accepted, and that the Court would not inſiſt on the other, for the following Reaſons:

The Priſoners refuſe to find Sureties for their good Behaviour.

1. Firſt, The Caſe had been long depending: They had been impriſoned thirty Weeks: Many Arguments had been made, for and againſt their being admitted to Bail; but Sureties, for their good Behaviour, had never yet been demanded.

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2. Becauſe the finding Sureties for good Behaviour, was ſeldom inſiſted on, on Returns of Felonies, or Treaſons; and it was an Implication they were culpable.

3. They demanded to be bailed, in Point of *Right*; and if it was not grantable of *Right*, they did not demand it: But they finding Sureties for the good Behaviour was merely a Point of Diſcretion; and they could not comply with it, without greatly offending the Parliament, where thoſe Matters were acted, which were ſurmiſed by the Return.

To which the Court anſwered, that the Return did not mention any thing done in Parliament; and they could not take Notice theſe things were done there: And Judge *Whitelock* obſerved, that the giving Sureties for the good Behaviour, was only for the Prevention of any Damage that might happen to the State: It was an Act of Government and Juriſdiction, and not of Law: And Judge *Croke* obſerved, it was no Inconvenience to the Priſoners; for the ſame Bail, and the ſame Recognizance, might ſerve both: And the Attorney-General *Heath* declared, he had an Information, ready in his Hand, to deliver into Court againſt them.

The Lord Chief Juſtice *Hyde* acquainted the Priſoners, that if they now refuſed to find Sureties for their good Behaviour, and were for that Cauſe remanded, they might not afterwards, perhaps, grant a *Habeas Corpus* for them, inaſmuch as they were acquainted with the Cauſe of their Impriſonment.

Then Serjeant *Aſhley* offered to be Bail for his Son-in-Law Mr. *Holles*; but Mr. *Holles* refuſing to be bound himſelf, the Court would not admit of it, as being contrary to the Courſe of the Court, to accept Bail, where the Principal refuſes to be bound: And Mr. *Long* having already found Sureties for his good Behaviour, at the Chief Juſtice's Chambers, ſeeing the Reſolution of his Companions, refuſed to continue his Sureties any longer, and was again remanded to Priſon, with the reſt, for not finding Sureties for his good Behaviour.

They are again remanded to Priſon.

Removed to the Gate-Houſe, *on account of the Plague.*

Selden, *Hobart*, *Stroud*, and *Valentine*, having been committed to the *King's-Bench*, and the Plague being very rife in *Southwark*, the three laſt petitioned the Judges of the *King's-Bench*, in *Trinity* Term, 6. *Car.* I. to be delivered over to the *Gate-Houſe*, *Weſtminiſter*, to avoid the Infection; and the Judges thereupon iſſued a Writ to the Marſhal of the *King's-Bench*, commanding him to deliver them to the Keeper of the *Gate-Houſe*; ſending Writs alſo to the Keeper to receive them. Mr. *Selden* would not ask this Favour of the Judges, while they were in Town; but when they were gone into the Country, applied himſelf to the Lord Treaſurer, to move the King, that he might be ſent to the *Gate-Houſe* alſo, to avoid the Danger: Which the Lord Treaſurer did; and his Majeſty agreeing to it, the Treaſurer ſent a Warrant to the Marſhal, ſignifying his Majeſty's Pleaſure, to remove Mr. *Selden* to the *Gate-Houſe*; and he was removed accordingly.

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This the Judges repreſented to the Lord Treaſurer, at their coming to Town (in *Michaelmas* Term, 6 *Car.* I.) to be irregular; and that Mr. *Selden* had neglected to apply himſelf to the Court, as he ought to have done. The Lord Treaſurer anſwered, he did not move the King to remove him, till Mr. *Selden* aſſured him, on his Credit, that it was a legal Way; and if they thought fit, they might remove him back again; for the King did not intend to do any Thing contrary to the Rules of that Court: And Writs were ordered the ſame *Michaelmas* Term, to ſend the four Priſoners back again to the *Marſhalſea*.

Some of the Priſoners proſecuted for an Eſcape.

On the 23d of *January*, the Attorney-General exhibited two ſeveral Informations againſt the ſaid *William Stroud*, and Sir *Miles Hobart*, for Eſcapes from the Priſon of the *Gate-Houſe*. Their Caſe was as follows: When they were ſent in the Manner above related, from the *Marſhalſea* to the *Gate-Houſe* at *Weſtminiſter*, the Keeper received them into a Houſe, lately built and adjoining to the Priſon of the *Gate-Houſe*, but no Part thereof; and the ſame Night gave *Stroud* leave to go to his Chamber in *Gray's-Inn*, and reſide there. Sir *Miles Hobart* alſo, being ſick, was allowed to reſide at his Lodgings in *Fleet-Street*, with his Keeper. And afterwards, the Plague increaſing in *London*, they were permitted to retire, with their reſpective Keepers, to their Seats, in the Country, for ſix Weeks; and then in *Michaelmas* Term following, they returned to the Keeper's Houſe, adjoining to the *Gate-Houſe* Priſon: But in all the Time they were in the Cuſtody of the Keeper of the *Gate-Houſe*, it could not be proved, they were in any Part of the old Priſon, unleſs when they once withdrew thither to a Cloſe-Stool: And being brought to their Trials, for this Eſcape, they were both acquitted: It being alledged, that they could not be convicted of an Eſcape, becauſe they were not confined in the Priſon: But the Judges, it ſeems, held, that their voluntary retiring to the Cloſe-Stool, made them Priſoners. It was reſolved alſo, that if a Priſoner depart from the Priſon, with his Keeper's Licence, it is, however, an Offence in the Priſoner, (and puniſhable) as well as in the Keeper: And this Difference was made, between Breach of Priſon, and an Eſcape, that the firſt was againſt the Keeper's Will, the other with his Conſent; to which the whole Court agreed.

And acquitted.

Some Points reſolved by the Judges.

The

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The KING againſt Sir JOHN ELLIOT, Knight, DENZIL HOLLES, and BENJAMIN VALENTINE, Eſquires, for *Seditious Words, for Contempt, and for an Aſſault on the Speaker of the Houſe of Commons, Hillary* Term, 1629. 5 *Car.* I.

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The Information.

AN Information was exhibited againſt them, by Sir *Robert Heath* Attorney-General, reciting, that a Parliament was ſummoned to be held at *Weſtminſter*, 17. *March*, 3 *Car.* and that Sir *John Elliot* was duly elected, and returned Knight, for the County of *Cornwal*; and the other two, Burgeſſes of Parliament, for other Places; and Sir *John Finch* choſen Speaker: That Sir *John Elliot*, *machinans & intendens, omnibus viis & modis ſeminare & excitare* Diſcord, evil Will, Murmurings, and Seditions, as well *verſus Regem, magnates, proceres, & juſticiarios, & reliquos ſubditos Regis, & totaliter deprivare & avertere regimen & gubernationem Regni Angliæ, tam in Domino Rege, quam in conſiliariis & miniſtris ſuis cujuſcunq; generis, & introducere tumultum & confuſionem* in all Eſtates and Parts, & *ad intentionem*, that all the King's Subjects ſhould withdraw their Affections from the King. The 23d *Feb. Anno* 4*to Car.* in the Parliament, and Hearing of the Commons, *falſo malitioſe & ſeditioſe*, uſed theſe Words: THE KING'S PRIVY-COUNCIL, HIS JUDGES, AND HIS COUNSEL LEARNED, HAVE CONSPIRED TOGETHER, TO TRAMPLE UNEDR THEIR FEET, the LIBERTIES OF THE SUBJECTS OF THIS REALM, AND THE PRIVILEGES OF THIS HOUSE: And afterwards, upon the 2d of *March*, *Anno* 4*to.* aforeſaid, the King appointed the Parliament to be adjourned, until the 10th of *March* next following, and ſo ſignified his Pleaſure to the Houſe of Commons: And that the three Defendants, the ſaid ſecond Day of *March*, 4*to Car. malitioſe* agreed, and amongſt themſelves conſpired, to diſturb and diſtract the Commons, that they ſhould not adjourn themſelves, according to the King's Pleaſure, before ſignified: And that the ſaid Sir *John Elliot*, according to the Agreement and Conſpiracy aforeſaid, had maliciouſly *in propoſitum & intentionem predict'* in the Houſe of Commons aforeſaid, ſpoken theſe falſe, malicious, pernicious, and ſeditious Words precedent, *&c.* And the ſaid *Denzil Holles*, according to the Agreement and Conſpiracy aforeſaid, between him and the other Defendants, then and there, *falſo malicioſe & ſeditioſe* uttered *hæc falſa, malitioſa, & ſcandaloſa verba precedentia, &c.* And that the ſaid *Denzil Holles*, and *Benjamin Valentine*, *ſecundum agreamentum & conſpirationem predict' & ad intentionem & propoſitum predict'* uttered the ſaid Words upon the ſaid 2d Day of *March*, after the ſignifying the King's Pleaſure, to adjourn: And the ſaid Sir *John Finch* the Speaker, endeavouring to get out of the Chair, according to the King's Command, they *vi & armis & manu forti & illicito*, aſſaulted, evil entreated, and forcibly detained him in the Chair: And afterwards, he being out of the Chair, they aſſaulted him in the Houſe, and evil entreated him, & *violenter manu forti & illicito*, drew him to the Chair, and thruſt him into it: Whereupon there was a great Tumult and Commotion in the Houſe, to the great Terror of the Commons there aſſembled againſt their Allegiance, *in maximum contemptum*, and to the Diſheriſon of the King, his Crown, and Dignity, *&c.* For which, *&c.*

Plea to the Juriſdiction.

To this Information the Defendants appearing, pleaded to the Juriſdiction of the Court: That the Court ought not to have Cognizance thereof, becauſe it was for Offences done in Parliament, and ought to be there examined and puniſhed, and not elſewhere. To which Plea the Attorney-General demurred, and the Defendants joined in Demurrer; and the next Term Mr. *Maſon*, of Council for the Defendants endeavoured to ſupport their Plea, obſerving, that they were charged, 1. With ſeditious Speeches. 2. Contempts againſt the King, in reſiſting the Adjournment; and, 3. With a Conſpiracy to keep the Speaker in the Chair.

Demurrer thereupon.

Arguments of the Defendants Counſel, in Support of their Plea.

That the Speeches contained Matter of Accuſation againſt ſome great Peers, of which the King could not take Notice. The Parliament was the King's Grand Council; and Councils ought to be ſecret and Cloſe; none ought to have Acceſs to the Councils of Parliament; nor ought any of the Members to diſcloſe them, without the Conſent of the Houſe: The King ought to give no Credit to any private Reports of their Proceedings: That the Liberty of accuſing Gentlemen, had always been held parliamentary: And theſe Liberties and Privileges of Parliament, were to be diſcuſſed there, and not in other Courts, or by the Common, or Civil Law.

2. As to the Contempt of the King's command, for adjourning the Parliament, he ſaid, it was a Queſtion, Whether the King could adjourn the Parliament, eſpecially by a verbal Meſſage? though he might prorogue it. The Judges, indeed, had reſolved, the King might adjourn the Houſe by Commiſſion, 27 *Eliz.* But it was not reſolved, he might do it by a verbal Command, ſignified by another. He admitted, the King might adjourn the Houſe in Perſon, or under the Great Seal, but not by a verbal Meſſage: None was bound to give Credit to ſuch a Meſſage: And where there was no legal Command, there could be no Contempt for Diſobedience. Beſides, as the Information was, there could be no Contempt; for the Information ſaid, that the King had Power to adjourn Parliaments; but here he commanded, *they* ſhould adjourn themſelves: And this was not in Purſuance of the Power he was ſuppoſed to have; the Adjournment of the Houſe was to be their own voluntary Act, which the King could not compel.

3. As to the Conſpiracy, to lay violent Hands on the Speaker, and keeping him in the

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the Chair; the Houſe were privileged to detain him in the Chair; and other Speakers had been ſo ſerved: That the King could not prefer an Information of Treſpaſs; he ought to have been informed by a Jury, *viz.* by Indictment, or Preſentment: Nor could this be a Contempt, becauſe it appeared not, that the Houſe was adjourned; and, if ſo, the Speaker ought to remain in the Chair; for without him the Houſe cannot be adjourned: That the preſent Caſe was of great Importance, and without recedent, and therefore was not determinable any where, but in Parliament. By the ſame Reaſon theſe Members were queſtioned, all the Members of the Commons might be queſtioned; and the Debates in Parliament muſt be ſubjected to the Determination of a petty Jury, if theſe Proceedings ſhould be allowed: No Man would dare to accuſe any great Offender, for the future, if Freedom of Speech in Parliament was to be puniſhed by Fines and Impriſonment: Gentlemen would neglect the publick Good, rather than hazard their own Ruin.

Further Arguments in Support of the Plea.

Mr. *Calthorpe*, alſo of Counſel for the Defendants, argued, that an Aſſault, or Conſpiracy, of the Members, could not be queſtioned out of Parliament; though he admitted, that Capital Offences, committed in Parliament, might.

That a Conſpiracy and Aſſault in Parliament, could not be examined in the *King's-Bench*, becauſe theſe Facts might be juſtifiable there. The bringing the Speaker to the Chair, might be by the Votes of the Commons, for ought appeared; and to determine theſe Matters here, was to make a ſuperior Court ſubject to an inferior Court. There never was any Precedent, that the *King's-Bench* had puniſhed Offences of this Nature committed in Parliament, where a Plea was put in to the Juriſdiction of the Court, as in this Caſe; and where there was no Precedent, Non-Uſage was a good Expoſition of the Law: If that Court had Juriſdiction, there might be contradictory Judgments; the Parliament might determine one Way, and the *King's-Bench* another. He inſiſted alſo, as Mr. *Maſon* had done, that this Information ought to have been founded on an Indictment, or other Matter of Record, and not upon a bare Advertiſement, or Intelligence, given to the King.

The Attorney-Generals Argumeuts, on the other Side.

To theſe Arguments of the Defendants Counſel, the Attorney-General anſwered, that Informations of this kind, for Offences that were not Capital, were frequently brought in that Court: That it was true, Freedom of Speech ought to be permitted in Parliament; But not ſeditious Speeches, tending to the Subverſion of the Government: That the Biſhop of *Carliſle*, 1 *Hen.* IV. was arraigned in the Court of *King's-Bench*, for ſuggeſting in Parliament, that the King had no Right to the Crown; to which he did not plead Privilege of Parliament, but that he was *Epiſcopus unctus*, *&c.* That though the Court of *King's-Bench* was ſaid to be an inferior Court, it did, in many Caſes, judge of the Privileges of Parliament, as well as of Acts of Parliament: And it was reſolved, in the Time of Queen *Elizabeth*, by the Judges, that Offences done in Parliament, might be puniſhed there out of Parliament.

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Then the Judges delivered their Opinions, that the Court of *King's-Bench*, as this Caſe was, had Juriſdiction, notwithſtanding theſe Offences were committed in Parliament; and that the impriſoned Members ought to anſwer over.

The Defendants Plea to the Juriſdiction, over-ruled.

The Lord Chief Juſtice *Hyde*, ſaid, it was true, an inferior Court could not meddle with the Judgments of a ſuperior Court; but if a particular Member of a ſuperior Court offended, he might be puniſhed in an inferior Court: As if a Judge committed a Capital Offence in that Court, he might be arraigned for it in a Court of *Oyer* and *Terminer*, at the *Old-Bailey*, which was an inferior Court to the *King's-Bench*.

Mr. Juſtice *Whitlock* ſaid, that all the Judges of *England* had reſolved this Point: And though it had been objected, that the Offence could not be examined here, unleſs it was Capital, he held, this Court had Cognizance of it, if it was Criminal, as the ſowing Sedition, to the Deſtruction of the Commonwealth was: That the Diſpute was not between the Judges of that Court, and the Parliament, or between the King and the Parliament; but between ſome private Members of the Houſe Commons, and the King himſelf. Here the King himſelf queſtioned them, for theſe Offences, as well he might. Indeed, that which was done by the Conſent of the whole Houſe, could not be queſtioned elſewhere: But, if private Members would move, and ſtir up Sedition in the Houſe, there was no ſuch Sanctity within theſe Walls, that they could not be queſtioned for it in other Courts. If a Burgeſs of Parliament becomes mutinous, he ſhall not plead the Privilege of Parliament, in Juſtification of his Diſloyalty. The Behaviour of Parliament-Men ought to be Parliamentary: No outragious Speeches againſt Great Miniſters of State, were ever ſuffered to go unpuniſhed: That it was univerſally agreed, Privilege of Parliament did not extend to Treaſon, Felony, or Breach of the Peace: And the laſt was the preſent Caſe, and therefore the Court of *King's-Bench* might well take Cognizance of it.

Croke alſo held, that all Offences againſt the Crown were puniſhable in this Court: The Parliament, indeed, was a higher Court; but every Member was not a Court. If he committed an Offence, he might be queſtioned here: This being the Opinion of the whole Court, it was ruled, the Defendants ſhould plead over: But they refuſing to put in any other Plea, than to the Juriſdiction, Judgment was pronounced againſt them, by Mr. Juſtice *Jones*, the laſt Day of the Term, *viz.* that Sir *John Elliot* ſhould be committed to the *Tower*, and pay a Fine of 2000*l.* and, upon his Enlargement, find Sureties for his good Behaviour: That *Holles* ſhould pay a Fine of 1000 Marks, be impriſoned, and find Sureties, in like Manner: And that *Valentine* ſhould pay a Fine of 500*l.* be impriſoned, and find Sureties likewiſe.

Judgment by Nihil dicit. *againſt the Defendants.*

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The Parliament of 1640. vote Sir John Finch *Speaker, guilty of a Breach of Privilege.*

In the next Parliament, which met the 13th of *April*, 1640. it was referred to a Committee of the Commons, to conſider of the Breach of their Privileges, by Sir *John Finch* Speaker of the Commons, 5 *Car.* by refuſing to put the Queſtion on the Command of the Houſe to do it: And on the 20th of *April*, it was reported from the Committee, that Sir *John Finch* did not ſay, *He would not put the Queſtion*; but that, *he durſt not put it*; and, that *he left the Chair, not to diſobey the Houſe, but to obey his Majeſty:* Whereupon the Houſe reſolved, That it was a Breach of Privilege, for the Speaker not to obey the Commands of the Houſe; and that it appeared, the Speaker did adjourn the Houſe by the Command of the King, without Conſent of the Houſe, which was alſo a Breach of Privilege.

The next Parliament, of 1640. enquire into the Caſe of the impriſoned Members, 3 & 5 Car.

They were alſo about to enquire into the Impriſonment of Sir *John Elliot*, Mr. *Holles*, Mr. *Selden*, and the reſt of the Members of the Houſe of Commons, in the 3d and 5th of *Car.* but being ſuddenly diſſolved, no Progreſs was made in that Enquiry: Another Parliament meeting on the 3d of *November* 1640. and a Committee being appointed, to conſider of the Caſes of the impriſoned Members, Mr. Recorder *Glyn* reported from the Committee the Sufferings they had undergone in Defence of the Liberties of the Subject: Whereupon the Houſe, on *July* 6. reſolved, 1. That the iſſuing Warrants by the Privy-Council, compelling Mr. *Holles*, and the reſt of the Members of that Parliament, to appear before them, during the Continuance of Parliament, was a Breach of Privilege.

The ſummoning Members before the Council, voted a Breach of Privilege. Further Votes concerning them.

2. That the committing them was a Breach of Privilege.

3. As was alſo the Searching and Sealing the Chambers, Studies, and Papers, of Mr. *Holles*, Mr. *Selden*, and Sir *John Elliot*, and iſſuing Warrants for that Purpoſe, during the Parliament.

4. That the exhibiting an Information in the Star-Chamber, againſt Mr. *Holles*, and the reſt, for Matters done in Parliament, was a Breach of Privilege.

5. That Sir *Robert Heath*, Sir *Humphry Davenport*, Sir *Heneage Finch*, Mr. *Hudſon*, and Sir *Robert Berkley*, who ſubſcribed their Names to the Information, were guilty of Breach of the Privilege.

6. That there was a Delay of Juſtice in the Caſe of Mr. *Holles*, and the reſt, who brought their Writs of *Habeas Corpus*, in that they were not admitted to Bail in *Eaſter* and *Trinity* Term, 5. *Car.*

Votes againſt the Judges.

7. That Sir *Nicholas Hyde*, then Chief-Juſtice of the King's-Bench, was guilty of this Delay.

8. Reſolved, That Sir *William Jones*, then one of the Juſtices of the King's-Bench, was guilty of this Delay.

Some Judges favoured.

9. That Sir *James Whitlocke*, then one of the Juſtices of the King's-Bench, was not guilty of this Delay.

10. Reſolved on the 8th of *July*, That Sir *George Croke* Knight, then one of the Judges of the King's-Bench, was not guilty of this Delay.

11. That the Continuance of Mr. *Holles*, and the reſt of the Members, in Priſon, 3 *Car.* by the then Judges of the King's-Bench, for not putting in Sureties for their good Behaviour, was without juſt or legal Cauſe. 1629. 5 Car. I.

12. That the exhibiting the Information againſt Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine*, in the King's-Bench, for Matters done in Parliament, was a Breach of Privilege.

13. That the over-ruling of the Plea, pleaded by Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine* (upon the Information) to the Juriſdiction of the Court, was againſt the Law, and Privilege of Parliament.

14. As was the Judgment given by *Nihil dicit*, the Fines impoſed, and their ſeveral Impriſonments thereupon.

15. That the proſecuting them in the Star-Chamber, and the King's Bench, was a Grievance.

Satisfaction voted to the ſuffering Members to be made them by the Lords of the Council, and Judges.

16. That Mr. *Holles*, Mr. *Stroud*, Mr. *Valentine*, and Mr. *Long*, and the Heirs and Executors of Sir *John Elliot*, Sir *Miles Hobart*, and Sir *Peter Hayman*, reſpectively, ought to have Reparation for their reſpective Damages and Sufferings, againſt the Lords and others of the Council, by whoſe Warrant they were apprehended and committed, and againſt the Council, that put their Hands to the Information in the Star-Chamber, and againſt the Judges of the King's-Bench.

Whitaker ſent to the Tower for ſearching their Chambers.

17. That Mr. *Laurence Whitaker*, being a Member of the Parliament 3 *Car.* and entring the Chamber of Sir *John Elliot*, then likewiſe a Member of Parliament, ſearching his Trunks and Papers, and ſealing them, was guilty of a Breach of Privilege, being done before the Diſſolution of the Parliament.

18. Reſolved, That the ſaid Mr. *Whitaker* be forthwith ſent to the *Tower*; there to remain a Priſoner, during the Pleaſure of the Houſe.

Then Mr. *Whitaker* was called down to hear his Sentence; and, kneeling at the Bar, did not deny his ſearching and ſealing up the Chamber, Trunk, and Study, of Sir *John Elliot*, between the 2d and 10th of *March*, 3 *Car.* during which Time the Parliament was adjourned: But endeavoured to extenuate his Offence, by the Confuſion of the Times, and the length of Time ſince that Crime was committed, being thirteen Years; and the Command that was laid on him by the King, and twenty-three of the Privy-Council.

Further Report, That the Warrants, for ſummoning the Members, and ſealing up their Papers, were read.

Mr. Recorder *Glyn* afterwards made this further Report to the Houſe of Commons, *viz.*

That the Warrant, which ſo iſſued, and was ſubſcribed by twelve Privy-Councillors, to ſummon the nine Members of the Commons, 3 *Car.* to appear before them during the Parliament, *viz.* Mr. *William Stroud*, Mr. *Benjamin Valentine*, Mr. *Denzil Holles*, Sir *John Elliot*, Mr. *John Selden*, Sir *Miles Hobart*, Sir *Peter Hayman*, Mr. *Walter Long*, and *William Coriton*, dated the 3d *Mar.* 4 *Car.* and the Names of the twelve Privy-Councillors that ſigned this Warrant, were read, (the Parliament being adjourned the 2d *March* to the 10th and then diſſolved.)

The Warrants under the Hands of ſixteen Privy-Councillors, for committing of Mr. *Denzil Holles*, Sir *John Elliot*, Mr. *John Selden*, Mr. *Benjamin Valentine*, and *William Coriton*, cloſe Priſoners to the *Tower*, dated 4 *Mar.* 4 *Car.*

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Car. during the Parliament, were read, with the Names of the Privy-Councillors that ſubſcribed them. The Warrants under the Hands of twenty-two Privy-Councillors, directed to *William Boſwel*, Eſq; to repair to the Lodgings of *Denzil Holles*, Eſq; and to *Simon Digby*, Eſq; to repair to the Lodgings of Mr. *John Selden*, and to *Laurence Whitaker*, Eſq; to repair to the Lodgings of Sir *John Elliot*, requiring them to ſeal up the Trunks, Studies, and Cabinets, or any other Things that had Papers in them, of the ſaid *Holles*, *Selden*, and *Elliot*, were read; and likewiſe, the Names of the Privy-Councillors that ſubſcribed the ſaid Warrants: A Warrant under the Hands of thirteen Privy-Councillors, for the Commitment of Mr. *William Stroud* cloſe Priſoner to the King's-Bench, dated 2 *April*, 1628. was read, and the Names of the Privy-Councillors, who ſubſcribed it; and the like Warrant, for the Commitment of Mr. *Walter Long* cloſe Priſoner to the *Marſhalſea*. Whereupon the following Reſolution was made.

5000 *l.* given to Holles, for his Sufferings.

Reſolved, That Mr. *Holles*, ſhall have the Sum of 5000 *l.* for his Damages, Loſſes, Impriſonments, and Sufferings, ſuſtained and undergone by him, for his ſervice to the Common-wealth in the Parliament of 3 *Car.*

To Selden, 5000 *l.*

Reſolved, That Mr. *Seldon* have the like Sum of 5000 *l.* for the like Services, *&c.*

Elliot, 5000 *l.*

Reſolved, That the like Sum be aſſigned for the Services, *&c.* done by Sir *John Elliot*, (deceaſed) to be diſpoſed of as the Houſe ſhall direct.

Reſolved, that 2000*l.* paid into the Court of Wards by Mr. *Elliot*, Heir of Sir *John Elliot*, for marrying Sir *Daniel Norton*'s Daughter, be repaid Mr. *Elliot*.

Ordered, That it be referred to a Commitee after what Manner Sir *John Elliot* came to his Death; his Uſage in the *Tower*; and to View the Rooms and Places where he was impriſoned, and where he died.

Hayman, 5000 *l.*

Reſolved, That 5000 *l.* be paid to the Repreſentatives of Sir *Peter Hayman*, for his Sufferings, *&c.* for the Service of the Common-wealth, 3 *Car.*

Long, 5000 *l.*

Reſolved, That Mr. *Walter Long* have 5000 *l.* for the like Services.

Stroud, 5000 *l.*

Reſolved, That 5000 *l.* be aſſigned for the Sufferings, *&c.* ſuſtained by Mr. *Stroud* deceaſed.

Valentine 5000 *l.*

Reſolved, That Mr. *Benjamin Valentine* have 5000 *l.* for the like Sufferings, *&c.*

Hobart 5000 *l.*

Reſolved, That 5000 *l.* be diſpoſed of, for the erecting a Monument to Sir *Miles Hobart* in Memory of his Services, *&c.*

Die Martis 12 *Novembris*, 1667.

Reſolutions of the Commons, Ann. 1667. *concerning the ſaid impriſoned Members, and Freedom of Speech.* Strode's *Act a general Law.*

Mr. *Vaughan* made a Report from a Committee of the Houſe of Commons, appointed to conſider of the Freedom of Speech: To which the Houſe agreed, *viz.* That the Act made 4 *Hen.* VIII. entitled, An Act concerning *Richard Strode*, was a general Law, and extended to indemnify the Members of both Houſes of Parliament, for and touching any Bills, Speaking, Reaſoning, or Declaring, any Matter or Matters in and concerning the Parliament, to be communed and treated of; and was a declaratory Law of the ancient and neceſſary Rights and Privileges of Parliament. And it was further reſolved, on the 23d of *November*, That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, in the King's-Bench, was an illegal Judgment, againſt the Freedom and Privilege of Parliament.

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On the 11th of *December*, 1667. the Commons, at a Conference with the Lords, communicated theſe Reſolutions to their Lordſhips, deſiring their Concurrence; and acquainted them with their Reaſons for making them.

The Commons offer their Reaſons to the Lords, for theſe Reſolutions.

They ſaid, the Houſe of Commons was accidentally informed of certain Books, publiſhed under the Name of Sir *George Croke's Reports*; in one of which a Caſe was publiſhed, which very much concerned this great Privilege of Parliament; and which, paſſing from Hand to Hand, amongſt the Men of the Long-Robe, might come in Time to be a received Opinion as good Law; and read the Caſe itſelf to their Lordſhips out of *Croke's* Reports, fol. 3. *which has been recited already.)*

Then the Commons obſerved, that there was ſome conſiderable Differences, between the printed Book and the Record itſelf: For the Crime alledged conſiſting partly of *Words* ſpoken in the Houſe, and partly of *Criminal Actions*, pretended to be committed; the Gentlemen accuſed pleaded ſeverally, *viz.* ſpecially to the Words, and a ſeveral Plea apart to the Criminal Actions: But, that the Court dealt ſo craftily, that they over-ruled the whole Plea mingled together, and took it in general; ſo that, perhaps, whatſoever was criminal in the Actions might ſerve for a Juſtification of their Rule, and might make it ſeem in Time to be come a Precedent, and a ruled Caſe, againſt the Liberty of Speech in Parliament; which they durſt not ſingly and bare-faced have done.

That the Houſe of Commons did enquire, what ancient Laws fortified this the greateſt Privilege of both Houſes, and found in the 4th of *Hen.* VIII. an Act concerning one *Richard Strode*, who was a Member of Parliament, and fined at the Stannary Courts, in the *Weſt*, for condeſcending and agreeing, with other Members of the Houſe, to paſs certain Acts to the Prejudice of the Stannaries: This Act was made occaſionly for him; but did reach to every Member of Parliament that then was, or ſhould be: The Words being as follow:

The Tenor of Strode's *Act, relating to Liberty of Speech.*

And over that, it be enacted by the ſame Authority, That all Suits, Accuſements, Condemnations, Executions, Fines, Amercements, Puniſhments, Corrections, Grievances, Charges, and Impoſitions, put or had, or hereafter to be put or had, unto or upon the ſaid Richard, *and to every other Perſon or Perſons afore-ſpecified, that now be of this preſent Parliament, or that of any Parliament hereafter ſhall be, for any Bill, Speaking, Reaſoning, or Declaring, any Matter or Matters concerning the Parliament to be commenced and treated of, be utterly void, and*

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and of none effect: And over that, be it enacted, they ſaid Authority, That if the ſaid Richard Strode, *or any of the ſaid other Perſon or Perſons, hereafter be vexed, troubled, or otherwiſe charged, for any Cauſes as is aforeſaid, that then, he or they, and every of them, ſo vexed or troubled, of or for the ſame, to have Action upon the Caſe againſt every ſuch Perſon or Perſons, ſo vexing or troubling any, contrary to this Ordinance and Proviſion: In the which Action, the Party grieved ſhall recover treble Damages, and Coſts; and that no Protection, Eſſoine, or Wager of Law, in the ſaid Action, in any wiſe be admitted or received.*

No Privilege for Criminal Actions in the Houſe, though there is for Words.

The Commons ſaid, It was very poſſible the *Plea* of thoſe worthy Perſons *Denzil Holles*, Sir *John Elliot*, and the reſt, was not ſufficient to the Juriſdiction of the Court, if they took in their Criminal Actions all together: But, as to the Words ſpoken in Parliament, the Court could have no Juriſdiction, while this Act of 4 *Hen.* VIII. was in force; which extended to all Members that then were, or ever ſhould be, as well as to *Strode*, and was a publick general Law, though made upon a private and a particular Occaſion.

They recommended alſo, to their Lordſhip's Conſideration, the Time when theſe Words in Sir *George Croke*'s Reports were ſpoken, *viz.* 2. *March*, 4 *Car.* being the Parliament which began the Year after the Judgment, given in the King's-Bench about the *Habeas Corpus*, was newly reverſed, which concerned the Freedom of their Perſons: Thus their Liberty of Speech was invaded, as the Liberty of their Perſons had been before: And, not long after, the ſame Judges (with ſome others) joined with them in the Caſe of Ship-Money, invaded the Property of their Goods and Eſtates; ſo that their Lordſhips found every Part of thoſe Words, for which thoſe worthy Perſons were accuſed, juſtified.

If any Man ſhould ſpeak againſt any of the Great Officers; as the Chancellor, or Treaſurer, or any of the reſt recited in thoſe Acts (*De ſcandalis Magnat.*) by accuſing them of Corruption, ill Counſel, or the like, he might poſſibly juſtify himſelf, by proving it: But in this Caſe it was impoſſible for him to do it, becauſe thoſe Judgments had preceded and concluded him.

The Commons obſerved further, That the Words in this Caſe are charged to be done *ea intentione*, which ought not to be; becauſe, by Law, whatever is not in itſelf unlawful, cannot have an unlawful Intent annexed to it. Things unlawful might be made higher Crimes by the Illneſs of the Intent: For Inſtance, taking away a Horſe is a Treſpaſs only; but the intending to ſteal him, makes it Felony: Borrowing a Horſe, though intending to ſteal him, was not Felony; becauſe borrowing is lawful: And there would be no Uſe of Freedom of Speech, if the depraved Intention might be annexed to this, or to any the moſt juſtifiable Action. If a Man drank Water, he might, at this Rate, be accuſed of a depraved Intention of ſubverting the King's Government, by deſtroying his Revenues of Exciſe and Cuſtoms.

Whatever is enacted, is lawful; but nothing can be enacted, till it be firſt moved or propounded by ſome Body: And if the Act wrongs no Body, neither can the propounding of it; and to that End the Members muſt be as free as the Houſes: There muſt be Debates, before any thing can be enacted. 1629. 5 Car. I.

In the Reign of *Hen.* VIII. when ſo many Perſons, *viz.* Abbots and Priors, were removed out of the Lords Houſe, and all religious Houſes and Lands taken away; an Information againſt any Members of Parliament, for propoſing ſo great an Alteration in Church and State, would have been very ſtrange.

Religion was further altered, they obſerved, in the Reign of *Edw.* VI. In Queen *Mary*'s Reign, the Nation returned to Popery; and, in Queen *Elizabeth*, the Proteſtant Religion was reſtored: But, ſhould Informations have been allowed in the King's-Bench, in theſe Times, againſt Members, for propounding or debating theſe Matters, ſuch Changes could have never been effected.

Theſe, the Commons ſaid, were the Reaſons and Inducements they had to paſs the following Votes, to which they deſired their Lordſhips Concurrence, *viz.*

Reſolutions of the Commons, in which the Lords concurred.

Reſolved, *&c.* That the Act of Parliament of 4 *Hen.* VIII. commonly entitled, An Act concerning *Richard Strode*, is a general Law, extending to indemnify all and every the Members of both Houſes of Parliament, in all Parliaments, for and touching any Bills, Speaking, Reaſoning or Declaring, of any Matter, or Matters, in and concerning the Parliament to be communed and treated of; and is a declaratory Law of the ancient and neceſſary Rights and Privileges of Parliament.

Reſolved, *&c.* That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, Eſquires, in the King's-Bench, was an illegal Judgment, and againſt the Freedom and Privilege of Parliament.

In both which Votes, the Lords agreed with the Commons.

Writ of Error ordered to be brought by Lord Holles.

Their Lordſhips alſo taking into Conſideration the ſaid Judgment given in the Court of King's-Bench, in *Michaelmas* Term 5 *Car.* I. againſt Sir *John Elliot* Knight, *Denzil Holles* and *Benjamin Valentine*, Eſquires: Ordered, That the ſaid *Denzil Holles* (now Lord *Holles*, Baron of *Ifeild*) do cauſe the Roll of the Court of King's-Bench, wherein the ſaid Judgment is recorded, to be brought before the Lords by a Writ of Error, to the End ſuch further Judgment might be given upon the ſaid Caſe, as the Houſe ſhould think fit. And the Roll being brought in accordingly, a *Poſtea* was added to the Record, wherein it is recited, that the Attorney-General came into Court, and acknowledged, that the aforeſaid *Denzil Holles* had paid his Fine; and, that the Attorney afterward brought into Court the King's Letters Patents, under his Privy-Seal, whereby his Majeſty remitted to the ſaid *Benjamin Valentine* his Fine, and all the reſt of the Judgment; and prayed, that the ſame might be enrolled and allowed: And Judgment was given on the Attorney's Prayer, that the ſaid *Benjamin Valentine* ſhould be diſcharged: And that the

Attorney-General acknowledges the Receipt of Lord Holles's *Fine.*

Valentine's Fine remitted.

of

1629. 5 Car. I.

The Errors assigned by Lord Holles.

said *Denzil Holles* afterwards brought a Writ of Error upon the said Judgment, returnable in Parliament; and having assigned for Error, that the Words mentioned in the Information were spoken in Parliament, and were not, therefore, cognizable in any other Court: And that the said *Denzil Holles* was also charged in the said Information, with an Assault upon the said Sir *John Finch*, the Speaker, to which the said *Denzil Holles* had put in two several Pleas, and yet the Court had given but one Judgment on the Whole; whereas there ought to have been two several Judgments, and several Fines imposed.

That the Lords having heard Counsel on the 15th of *April* 1668. as well to argue the Errors assigned by the Lord *Holles*, Baron of *Ifeild*, upon the Writ of Error brought against the said Judgment given in the Court of King's-Bench 5 *Car.* I. against the said Lord *Holles* by the Name of *Denzil Holles* Esq; and others; as also to maintain and defend the said Judgment on his Majesty's Behalf: *Upon due Consideration had of what had been offered on both Parts thereupon, The Lords Spiritual and Temporal in Parliament assembled, do order, and adjudge, that the said Judgment, given in the Court of King's-Bench,* 5 Car. I. *against the said* Denzil Holles, *and others, shall be reversed.*

The Judgment against Lord Holles, *reversed by the Lords.*

And the following Form was thereupon affixed to the Transcript of the Record, *viz.*

The Form of the said Reversal recorded.

Et quia Curia Parliamenti de judicio suo de & super præmissis reddend' nondum advisatur, dies datus est tam prædict' Galfrido Palmer *Militi & Baronet. qui sequitur, &c. quam prædict'* Denzil *Domino* Holles, *coram eadem Curia usq; ad diem* Mercurii *decimum quintum diem* Aprilis *tunc proximum sequentem apud* Westmonast' *in Comitat'* Midd' *de judicio suo inde audiend' eo quod Curia prædict' nondum, &c. Ad quem diem coram Curia prædict' venit tam prædict* Galfridus Palmer *qui sequitur, &c. quam prædictus* Denzil *Dominus* Holles *in propriis personis suis. Super quo visis, Et per eandem Curiam nunc hic plenius intellectis omnibus & singulis præmissis, maturaque deliberatione inde habita, consideratum est per Curiam prædict' Quod Judicium prædict' ob errores prædictos & alios in Recordo & processu prædictis compertos, revocetur, adnulletur, & penitus pro nullo habeatur. Et quod prædict'* Denzil *Dominus* Holles *ad omnia quæ idem Dominus* Holles *occasione Judicii prædict' amisit, restituatur.*

Jo. Browne *Cleric. Parliamentorum.*

Remarks on the Case of Darnel, &c. *on their bringing their Writs of* Habeas Corpus, *to be bailed.*

Among the Gentlemen that were committed, by the King and the Privy-Council, 3 *Car.* I. for not lending his Majesty Money, on Privy-Seals for the Repayment thereof within the Space of 18 Months, five of them, *viz.* Sir *Thomas Darnel*, Sir *John Heveningham*, Sir *Walter Earl*, Sir *Edmund Hampden*, and Sir *John Corbet*, brought their respective Writs of *Habeas Corpus*, returnable in the Court of King's-Bench; and, upon their appearing in that Court, their Counsel moved, that they might be admitted to Bail.

1627. 3 Car. I.

Sir *Thomas Darnel* behaved himself with a great deal of good Manners and Temper, on this Occasion; and seems to have been bailed, or discharged, by his Majesty's Consent upon the first Motion; for we hear nothing of him afterwards: But the other four, *viz.* Sir *John Heveningham*, Sir *Walter Earl*, Sir *Edmund Hampden*, and Sir *John Corbet*, insisted strenuously, by their Counsel, that they ought, *of Right*, to be admitted to Bail by the Court of King's-Bench; and refused to make any Submission, or Application to his Majesty, for their Liberty; though it was intimated to them, both publickly and privately, that upon making such Application, they might be discharged.

The Counsel for the Prisoners insisted, That the Returns of the respective Writs of *Habeas Corpus* were insufficient, both in Form and Substance: As to the Form, they said, the Return was uncertain and contradictory: But the Court over-ruled this Objection, and declared it to be certain, and not contradictory; neither did the Counsel for the Prisoners seem to rely much upon their Exceptions, as to the Form: The grand Objection was to the Substance, *That they were committed by his Majesty's special Command, without any Cause expressed in the Warrant*; and there being no Cause expressed, they urged, that they ought to be admitted to Bail of course, it was a Right which the Judges of the King's-Bench could not refuse them, on their being brought into Court by their respective Writs of *Habeas Corpus*.

But their Counsel, in arguing this Case, carried the Matter much farther: They did not only insist, that their Clients ought to be admitted to Bail; but that neither the King or the Privy-Council, had Power to commit any Man to Prison; or, if they had, they could not do it without expressing the Cause in the Warrant: Nay, they urged, that no Man could be imprisoned, without a Presentment, or Indictment, by any Authority whatever, according to *Magna Charta*, and six subsequent Statutes, made for the Explanation and Confirmation of that Statute.

To which the King's Counsel answered, That this could not be understood of the first Apprehension, or Commitment; because every Court of Justice, every Justice of Peace, or Petty Constable, might arrest and commit; and it was every Day's Practice to do it, without Presentment, or Indictment: That *Magna Charta*, indeed, said, that no Man should be imprisoned, unless by Presentment, or Indictment: But then it was added, *aut per legem terræ*, or by the Law of the Land. So that, if Commitments by the King, by the Privy-Council, or by a Justice of Peace, *&c.* were lawful Commitments before; the Statute of *Magna Charta*, and those other Statutes made in Confirmation of it, had not altered the Law in this Respect; and that *Magna Charta*, could only intend, that no Man should be *adjudged* or *condemned*, to be imprisoned, but by Presentment, Indictment, or other legal Process; and this seems to have been agreed also, at length, by the Prisoners Counsel.

1627-8. 3 & 4 Car. I.

The only Queſtion that continued to be diſputed, both at the King's-Bench Bar, and in Parliament afterwards, was, whether a Perſon committed by the King's ſpecial Command, or by the Command of the Privy-Council, without *Cauſe expreſſed in the Warrant*, ought, *of Right*, to be bailed by the Court of King's-Bench, on his being brought thither by an *Habeas Corpus*.

Many Precedents were produced by the Priſoners Counſel, to ſhew, that where Perſons had been committed, by the King, or Council, and no Cauſe ſhewn, they had been bailed by the Court of King's Bench.

On the other Hand, the King's Counſel inſiſted, that thoſe very Precedents, and many more, evidently ſhewed, that where Perſons were committed by the King, or Council, without Cauſe ſhewn, they were never bailed, until the King's Pleaſure was known.

The Lord Chief Juſtice, who delivered the Opinion of the whole Court, declared, that they, having viewed and conſidered all the Precedents, could not find that one Perſon, *no, not One*, committed by the King, without Cauſe expreſſed, that had been admitted to Bail without the King's Direction; and, thereupon, the four Gentlemen were remanded to Priſon, where they remained till the 29th of *January* following; when his Majeſty ordered them to be ſet at Liberty.

A Parliament being ſummoned to meet about ſix Weeks afterwards, *viz.* the 17th of *March*, 1627-8, and the Gentlemen who had been impriſoned for the Non-payment of the Loan, elected Members of the Houſe of Commons: The Houſe was no ſooner met, but, amongſt the reſt of their Grievances, they fell upon this, of the Impriſonment of the four Gentlemen, for Non-payment of the Loan, and the Court of King's-Bench's refuſing to bail them, on bringing their reſpective Writs of *Habeas Corpus*.

If this was Law, ſome ſaid, there was an End of all their Liberties and Properties at once. If the King could demand fifteen or twenty Pounds of a Gentleman, by the ſame Rule he might require his whole Eſtate; and by the ſame Law, he impriſoned theſe Gentlemen for not lending their Money, he might impriſon all the Gentlemen in the Kingdom, and doom them to perpetual Impriſonment, if none of the Courts of Juſtice could admit them to Bail: That it was in vain for the King to ask Supplies of his Parliament; for, if this was Law, they had nothing left to give: The King was already, in effect, the Grand, and, indeed, only Proprietor of all the Eſtates of the Kingdom, and his Subjects in a worſe Condition than Bondmen, or Villains of old; for, even thoſe, their Lords could not doom to perpetual Impriſonment without Cauſe. That a Priſoner thus committed, without a Cauſe expreſſed, was in a worſe Condition than one committed for Treaſon, or Felony; for ſuch Criminals muſt either be brought to Trial, or bailed: But theſe Gentlemen had no Proſpect of being ever delivered by Law; and, if the King had not been ſo gracious to conſent to their Enlargement, muſt have been Priſoners for Life.

On the other hand, it was ſaid, That a Truſt muſt be repoſed in the King, in whom the executive Power was lodged: That it was impoſſible for any written Laws to provide againſt all Exigencies of State: That there were many other Prerogatives the King had, that were as inconvenient as this of committing Men without ſhewing Cauſe. The King might embaſe the Coin: The King might lay an Embargo on all Merchant Ships; and, in the Time of Peſtilence, reſtrain Men of their legal Liberties: But it was not to be preſumed his Majeſty would do any of theſe Things, unleſs there was a Neceſſity for them. If the King, or Council, could not commit a Man without expreſſing their Reaſons for it, all Secrets of State muſt be diſcloſed; Enemies muſt be made Maſters of our Councils; and Accomplices in Treaſon, or Rebellion, might be furniſhed with Opportunities of ruining the Government, or, at leaſt, of eſcaping Puniſhment: That it was the conſtant Practice, for the King and Council to commit, without ſhewing Cauſe, when the Diſcovery of it might be of ill Conſequence to the State; and they were the only proper Judges of State-Affairs; and that, upon Petition to his Majeſty, it was uſual to diſcharge Priſoners, after the Danger was over; but, that Judges of the King's Bench never bailed, or diſcharged, any Man in theſe Caſes, without firſt conſulting the King, and receiving his Orders: And there was no Reaſon his Majeſty ſhould not be entruſted with this Power, or Prerogative as his Predeceſſors had been: And, indeed, the Gentlemen on the other Side did acknowledge, that it was uſual for the Judges of the King's-Bench to acquaint the King, before they bailed ſuch Priſoners as were committed by the King, without Cauſe expreſſed, and receive his Majeſty's Conſent; but they would have this to be Matter of Compliment only; and, that the Court ought of Right to bail or diſcharge ſuch Priſoners, whether the King conſented to it, or not; otherwiſe the Liberties and Properties of all the People of the Kingdom would be at his Majeſty's Diſpoſal; and they were no better than Vaſſals, or Tenants at Will to the Crown.

1627-8. 3 & 4 Car. I.

Thus we ſee Matters were carried to very great Extremes, when by the Wiſdom of ſome of the Members of both Houſes (who well underſtood, that the true Intereſt of the Nation did not conſiſt, either in depreſſing the Crown, or giving up the Liberties and Properties of the Subject) theſe Differences were in a Manner accommodated. The Parliament gave the King five Subſidies, to ſupply the Exigencies of the State: And his Majeſty, on the other hand, granted their Petition of Right, wherein he confirmed all the Statutes that prohibited raiſing Money by Loans, or Benevolences, and relinquiſhed his Right of impriſoning the Subject without Cauſe ſhewn.

But it appeared, that there was a Set of Men in the Houſe that were not to be ſatisfied; Men, who fomented theſe Diviſions between the King and his People on ſeveral Accounts. There were thoſe, who were determined never to let fall the Cry of Jealouſies and Fears, till the Duke of *Buckingham*, the King's Prime Miniſter, was deſtroyed: There were others, Puritans and Presbyterians, in their Hearts, who

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who could never reſt, till they ſaw the eſtabliſhed Church ſubverted, and their own Superſtition triumphant; which they apprehended was not to be done, but by the Deſtruction of the Civil Government: And there were alſo great Numbers of pure Commonwealthſmen, who were ready to join with the laſt to pull down the Monarchy, in order to ſet up Ariſtocracy, in which they and their Friends propoſed to have the greateſt Share of the Adminiſtration.

All theſe joined in the common Cry of Popery and Tyranny; and in fomenting Jealouſies and Fears among the People; while many more were influenced by their Numbers, Aſſurance, and ſpecious Pretences, to fall in with them in diſtreſſing the Government.

The King, therefore, had no ſooner granted the Petition of Right, but the Commons drew up a Remonſtrance, repreſenting to his Majeſty, that both the Church and Commonwealth were ſtill in great Danger, the Laws not being put in Execution againſt *Roman* Catholicks, and the Doctrine of Arminianiſm (the Freedom of the Will) encouraged, praying, that Orthodox (Puritan or Calviniſt) Preachers might be preferred, and their Adverſaries diſcountenanced: And having repeated their former Complaints of the Adminiſtration, in raiſing Money by Way of Loan, impriſoning the Refuſers, keeping up a ſtanding Army, *&c.* (though it was in a Time of actual War) they fall again directly on the Duke of *Buckingham*, the Prime Miniſter; declaring, they would never be ſatisfied, while he had any Share in the Adminiſtration; for he was the Author of all their Grievances.

To which the King anſwered, *He little expected ſuch a Remonſtrance, after his granting their Petition of Right.*

The Commons, however, proceeded, to frame another Remonſtrance againſt the King's receiving Tonnage and Poundage; which his Majeſty being acquainted with, came on a ſudden to the Houſe of Peers, the 26th of *June*, and declared, that by paſſing the Petition of Right, he had not granted them any new, but only confirmed their ancient Rights and Liberties; and, that as for Tonnage and Poundage, it was a thing he could not want: That it was never intended to be asked by that Petition; nor did he ever intend to part with it: After which the Parliament was prorogued to the 20th of *October* following.

Soon after the riſing of the Parliament, the Duke of *Buckingham* aſſembled a very formidable Fleet and Army, to go to the Relief of the *French* Proteſtants at *Rochelle:* But while he lay at *Portſmouth*, juſt ready to embark, he was aſſaſſinated on the 23d of *Auguſt*, by one *Felton*, a diſcarded Lieutenant, and a zealous Fanatick, who ſtabbed the Duke to the Heart, with a Knife, as he paſſed out of one Room into another, under a Tapeſtry Hanging. The Villian, it ſeems, had a double Inducement to commit the Fact: Firſt, to revenge himſelf on his Grace, for not giving him a Captain's Commiſſion, to which he pretended: And, ſecondly, to deliver his Friends, the Puritans, from their great Enemy, the Duke: And, accordingly, we find, the Wretch gloried in the Murder, believing he had done God and his Country good Service; and never attempted to make his Eſcape, or oppoſe thoſe who came to apprehend him. He was tried, and condemned; and being executed the 29th of *November* following, was afterwards hung in Chains.

1628. 4 Car. I.

In the mean Time, the People were further diſguſted at the Impriſonment of ſome Merchants, who refuſed to pay the Duties of Tonnage and Poundage: And the creating Sir *Richard Weſton* Lord Treaſurer, and Prime Miniſter, who was ſuppoſed to be Popiſhly affected, ſtill increaſed their Fears and Jealouſies: Inſomuch that, though the Duke of *Buckingham*, who ſeemed to be the principal Butt and Object of the People's Fury, was now dead; when the Parliament met on the 20th of *January*, 1628-9 the Houſe of Commons appeared as clamorous as ever, falling immediately upon the Illegality of the King's receiving Tonnage and Poundage: Whereupon the King ordered both Houſes to attend him at *Whitehall*; and acquainted them, that it was not his Intention to challenge Tonnage and Poundage, as his Right; but that he took it only *de bene eſſe*, for the neceſſary Support of the Government, till it ſhould be granted him by Parliament: And, as they had now an Opportunity of preparing a Bill for that Purpoſe, he expected they would do it, without Loſs of Time, according to the Profeſſions they had frequently made, of their Readineſs to gratify him in this Particular.

This gave the Faction Occaſion to clamour more than ever. Inſtead of going upon the Bill of Tonnage and Poundage therefore, as his Majeſty deſired, they exclaimed againſt the Growth of Popery and Arminianiſm, which that Incendiary *Elliot* cried out, were breaking in upon them, like an Inundation; averring, that ſome of the Biſhops themſelves were not Orthodox, or ſound in Religion. They proceeded to ſend one of the Sheriffs of *London* to the *Tower*, for levying the Duties of Tonnage and Poundage; called the Officers of the Cuſtoms before them, for ſeizing the Goods of Mr. *Rolls*, one of their Members, for refuſing to pay Cuſtom: And when the King ſent them a Meſſage, that the Officers acted by his expreſs Orders, they cried out, *Adjourn, Adjourn*, breaking up in a tumultuous Manner. Being aſſembled again, two or three Days after, *Elliot* roared out again, that he found the Lord Treaſurer *Weſton* was building on the Foundation laid by his Maſter the Duke: That the Miniſters were for breaking Parliaments, leſt Parliaments ſhould break them; and that all Prieſts and Papiſts were protected by the Treaſurer: And when, on the 2d of *March* 1628-9 4 *Car.* the Speaker delivered a Meſſage from his Majeſty, commanding them to adjourn, *Elliot* offered a Remonſtrance againſt Tonnage and Poundage; and, the Speaker refuſing to read it, Sir *Miles Hobart* locked the Door of the Houſe, and took away the Key. *Coriton*, another zealous Member, aſſaulted and ſtruck Mr. *Winterton*, who was for obeying his Majeſty's Command, while *Elliot* read the Remonſtrance himſelf, and the Speaker was urged by Mr. *Selden* and others, to put the Queſtion:

But

1628 4 Car. I.

But he anſwered, he was expreſly commanded by his Majeſty, to riſe as ſoon as he had delivered his Meſſage, and accordingly left the Chair: But Mr. *Denzil Holles*, *Benjamin Valentine*, and others, pulled him back again, and held him in the Chair by Force: And when ſome of the Privy-Council endeavoured to releaſe the Speaker, *Holles* ſwore, *by God's Wounds, he ſhould not ſtir, till they gave him leave to riſe*; and proceeded to read the following Proteſt, *viz.* "Whoever ſhall bring in "Innovation in Religion, or by Favour ſeek "to extend, or introduce, Popery, or Armini-"aniſm, or other Opinions, diſagreeing from "the true and orthodox Church, ſhall be re-"puted a Capital Enemy to the Kingdom and "Commonwealth. 2. Whoever ſhall coun-"ſel or adviſe the taking and levying the Sub-"ſidies of Tonnage and Poundage, not being "granted by Parliament, or ſhall be an Actor, "or Inſtrument, therein, ſhall be reputed an "Innovator in the Government, and a Capi-"tal Enemy to this Kingdom and Common-"wealth. 3. If any Merchant, or Perſon, "whatſoever, ſhall voluntarily yield, or pay, "the Subſidies of Tonnage and Poundage, "not being granted by Parliament, he ſhall "likewiſe be reputed a Betrayer of the Liber-"ties of *England*, and an Enemy to the ſame."

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And if any Perſon ſhall be committed for Treaſon, or Felony, plainly and ſpecially expreſſed in the Warrant; and if upon his Prayer, or Petition, in open Court, the firſt Week of the Term, or the firſt Day of the Aſſizes of *Oyer* and *Terminer*, to be brought to his Trial, he ſhall not be indicted the next Term, or Seſſions, after his Commitment, the Judges, upon Motion made to them in Court, by the Priſoner, or any for him, the laſt Day of the Term, or Seſſions, are required to ſet at Liberty ſuch Priſoner, upon Bail: And if ſuch Priſoner ſhall not be indicted, and tried, the ſecond Seſſions after his Commitment, or ſhall be acquitted upon his Trial, he ſhall be diſcharged.

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And it was further provided, That, after the Aſſizes proclaimed, no Priſoner ſhould be removed from the common Goal of the County, but ſhould be tried before the Judge of Aſſize. However, after the Aſſizes, he may have his *Habeas Corpus*. And it is now held, that the Court of *King's-Bench* have a diſcretionary Power of bailing Perſons, almoſt in every Caſe, even for Treaſon, or Felony, and are not bound, by the Statute of *Weſtminſter* 1. *cap* 15. as Sheriffs and Juſtices of the Peace are: And though they have of late paid a much greater Deference to a *General* Commitment of either Houſe of Parliament, than to a Commitment by the King himſelf, or the Privy-Council, during the Continuance of a Seſſion; yet, as has been obſerved, they do uſually venture to bail ſuch Priſoners as have been committed by either Houſe, after a Prorogation, or Diſſolution: And there has been an Inſtance of this Court's bailing a Nobleman, impeached of High-Treaſon, when the Parliament was diſſolved, *Hawk.* 111. A Commitment for Diſobedience to a Decree of the Court of *Chancery*, however, is held ſtill to be good, without ſhewing what the Decree was: And the Perſon committed, is not bailable by the Court of *King's-Bench*, notwithſtanding the *Habeas Corpus* Act: Nor will the *King's-Bench* bail a Perſon committed by any other Court of Record; unleſs it appear, the Perſon is committed for a Fact, which is indeed no Crime; or not within the Juriſdiction of the Court committing him; or where a Proſecution appears to be malicious, or the like. *Hawk.* 112.

And though the Court of *King's-Bench* may admit to Bail, Perſons excluded by the Statute of *Weſtm.* 1. *cap.* 15. yet they pay a great Regard to the Rules preſcribed by that Statute. There are few Inſtances of Perſons charged with Felony, or notoriouſly guilty of Treaſon,

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And if any of the Courts of *Weſtminſter*, in Term Time, or any Judge of the ſaid Courts, in the Vacation, ſhall deny ſuch Writ of *Habeas Corpus*, they ſhall ſeverally forfeit five hundred Pounds, to the Party grieved.

And it was further provided by this Act, That no Subject ſhould be ſent Priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or any Place beyond Sea: And that any Perſon ſo impriſoned, ſhould have an Action of falſe Impriſonment againſt the Perſons, by whom he ſhould be ſo committed, detained, impriſoned, ſent Priſoner, or tranſported; and againſt all Perſons, who ſhould make, or ſign, any ſuch Warrant, or be adviſing, aiding, or aſſiſting, in the ſame; and that the Plaintiff ſhould recover treble Coſts, beſides Damages; which Damages ſhould not be leſs than five hundred Pounds; and that the Offender ſhould incur a *Præmunire*, and be incapable of a Pardon.

And it was further provided, That, after the Aſſizes proclaimed, no Priſoner ſhould be removed from the common Goal of the County, but ſhould be tried before the Judge of Aſſize. However, after the Aſſizes, he may have his *Habeas Corpus*. And it is now held, that the Court of *King's-Bench* have a diſcretionary Power of bailing Perſons, almoſt in every Caſe, even for Treaſon, or Felony, and are not bound, by the Statute of *Weſtminſter* 1. *cap* 15. as Sheriffs and Juſtices of the Peace are: And though they have of late paid a much greater Deference to a *General* Commitment of either Houſe of Parliament, than to a Commitment by the King himſelf, or the Privy-Council, during the Continuance of a Seſſion; yet, as has been obſerved, they do uſually venture to bail ſuch Priſoners as have been committed by either Houſe, after a Prorogation, or Diſſolution: And there has been an Inſtance of this Court's bailing a Nobleman, impeached of High-Treaſon, when the Parliament was diſſolved, *Hawk.* 111. A Commitment for Diſobedience to a Decree of the Court of *Chancery*, however, is held ſtill to be good, without ſhewing what the Decree was: And the Perſon committed, is not bailable by the Court of *King's-Bench*, notwithſtanding the *Habeas Corpus* Act: Nor will the *King's-Bench* bail a Perſon committed by any other Court of Record; unleſs it appear, the Perſon is committed for a Fact, which is indeed no Crime; or not within the Juriſdiction of the Court committing him; or where a Proſecution appears to be malicious, or the like. *Hawk.* 112.

And though the Court of *King's-Bench* may admit to Bail, Perſons excluded by the Statute of *Weſtm.* 1. *cap.* 15. yet they pay a great Regard to the Rules preſcribed by that Statute. There are few Inſtances of Perſons charged with Felony, or notoriouſly guilty of Treaſon,

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or Manſlaughter, that have been admitted to Bail, without ſome ſpecial Motive to induce the Court to grant it. As where a Perſon outlawed alledges Error in the Record; or a Perſon is convicted contrary to Evidence; or the Plaintiff, in an Appeal, hath unreaſonably delayed Proſecution; or where a Priſoner is in Danger of his Life, by Famine, or ſome malignant Diſtemper. *ibid.*

It is the Practice of the Court of *King's-Bench*, in admitting a Perſon to Bail, who is actually preſent in Court upon an Indictment, or Appeal, of Felony, or other Crime, puniſhable with the Loſs of Life, or Member, to take a general Recognizance to the King in a certain Sum, from each of the Bail, that the Priſoner ſhall appear at a certain Day, *&c.* And alſo, that the Bail ſhall be liable, in Default of his Appearance, Body for Body: And it ſeems left to the Diſcretion of the Juſtices, in admitting a Perſon to Bail for Felony, to take the Recognizance either in a certain Sum, or Body for Body. But at this Day, Perſons bound Body for Body, are not liable on the Forfeiture of the Recognizance, to ſuch Puniſhment as the principal would be, if found guilty; but can only be fined. 2 *Hawk.* 115.

A Perſon bailed for Felony, ought to have two Sureties at leaſt: And, it is the Practice of the King's-Bench, not to admit a Perſon to Bail upon a *Habeas Corpus*, on a Commitment for Treaſon, or Felony, without four Sureties. *Pract. Reg.* 110.

Theſe Proſecutions ſaid to be the Occaſion of the Grand Rebellion.

Give me Leave to obſerve further, That the Ruin of King *Charles* I. and the utter Subverſion of the Conſtitution, has been aſcribed, by ſome to the Proſecution of the Gentlemen laſt mentioned. It is ſuppoſed, if his Majeſty had never levied Money without Conſent of Parliament, impriſoned the turbulent Members of the Houſe of Commons, and queſtioned them in the Court of King's-Bench, for their Behaviour in the Houſe, he might have gone in Peace to his Grave: That theſe Proceedings gave the People a Handle, to encroach on his Prerogative, embarraſs his Affairs, and uſurp an Authority to controul, and even ſubdue the Crown; without which, they were taught, their Liberties and Properties could never be ſecured.

But, ſurely, it is poſſible to fall into ſuch Times, that all the Wiſdom and Virtue that ever any Prince poſſeſſed, cannot preſerve him; and, if ever there was ſuch an unhappy Conjuncture, it was in this Reign: The Enemies of this Prince dwelt altogether on this arbitrary Diſpoſition, and the illegal Ways he took to raiſe Money, in order to juſtify their Rebellion and Uſurpation: But they are very ſilent as to the unparalelled Provocations they gave him, and the Neceſſities they reduced him to; which in a manner compelled him to take thoſe extraordinary Ways: Such was the undutiful Behaviour of the Commons to this young Prince, at his Acceſſion, before they could diſcern whether his Adminiſtration would be good or bad, that, though they had drawn the Crown into a War, they would not raiſe one Penny of Money to ſupport it; whereby the Expedition againſt *Spain* miſcarried in the firſt Year of his Reign; and in the 2d, the Princes of *Germany* and the *Danes*, in Confederacy with *England*, were defeated and ruined: Nay, they went farther, and denied to ſettle the Duties of Tonnage and Poundage on him, for the ſupport of his Houſhold, under Pretence that he had taken them, on his Acceſſion, without their Leave, though his Anceſtors had ever done the ſame. And when they had diſtreſſed him to ſuch a Degree, what could they expect? His Majeſty ſaw the Government muſt ſink, and be diſſolved, if he had no Revenue to ſupport his Adminiſtration; and the Parliament would not give him a Penny, unleſs he would diſcard the Duke of *Buckingham*, and ſuch of his Miniſters as they had taken a Prejudice to, and ſuffer their Leaders to govern all his Councils: And when the King declared, that the Duke was innocent, of his own Knowledge, of what they charged him with; even this would not ſatisfy them: Now, unleſs it be ſaid, that a King is obliged to deliver up his Miniſters, how faithful and able ſoever, and transfer his Authority to ſuch Men as a powerful Faction ſhall impoſe upon him, I cannot ſee how he could avoid taking extraordinary Ways to raiſe Money, which was, indeed, what his Enemies wanted, and rejoiced to ſee him driven to theſe Extremes: There were a great many Gentlemen among the Commons, it is true, that were for accommodating Matters, by granting Supplies, and relieving the King's Neceſſities. But we find the Enemies of the Miniſtry, the Puritans and Republicans, were too hard for them: When one Grievance was remedied, they immediately ſtarted another, and diſtracting the People with imaginary Jealouſies and Fears, threw all into Confuſion; and by the ſame Acts they might have ruined any Prince that ever reigned.

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We have no Inſtance of a King of *England*, of more Virtue, Parts, and Learning, than King *Charles* the Firſt was; and, whatever his Enemies may ſuggeſt to the contrary, farther from aſſuming an arbitrary Dominion: All he deſired was, to retain the legal Prerogatives his Anceſtors enjoyed: He would, perhaps, have been contented with much leſs Power than many of them exerciſed, had he not ſeen the Commons aiming at Dominion, and daily encroaching on the Regal Prerogatives; and found, if he gave way to their inſatiable Demands, they would infallibly deſtroy the Conſtitution both in Church and State. It is ſufficiently evident, that the Ambition of the Commons, joined with the reſtleſs Zeal of the Puritans, to deſtroy the Church of *England*, and eſtabliſh their Idol, Presbytery, were the principal Sources of the Grand Rebellion; and that thoſe People who reduced King *Charles* to the Neceſſity of raiſing Money by thoſe extraordinary Ways, were greater Enemies to their Country than thoſe, who adviſed him to uſe thoſe Means for his Preſervation.

Neceſſity has no Law, according to the Proverb; or rather, all Laws muſt give way to Neceſſity: This is a Doctrine the Saints themſelves inculcated ſoon after, urging the *Neceſſity* of Rebellion againſt their Sovereign, to preſerve their Rights and Liberties; and taxed the Subject more arbitrarily and extravagantly, to ſupport their Rebellion and Uſurpation, than any King had ever done.

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The rude Treatment of the Laws by their Hero *Cromwell*, when ſome urged *Magna Charta*, in Defence of their Liberties and Properties, will never be forgot; that mighty Advocate for Liberty and Property, when he had depoſed his Sovereign, and uſurped his Throne, gave the grand Charter of the People's Liberties the Title of *Magna Farta*, and appears to have looked upon the reſt of the Laws of the Kingdom with equal Deriſion and Contempt; taxing, impriſoning, decimating, tranſporting, and murdering the Nobility and Gentry, at Pleaſure; who ſoon ſaw their Error, in contributing to the Deſtruction of the Monarchy; and no doubt, heartily wiſhed for King *Charles*'s Adminiſtration again.

But not to inſiſt on the Examples of Rebels and Uſurpers, who exclaim the loudeſt againſt the Invaſion of Liberty and Property, when they are out of the Adminiſtration, and are the moſt intolerable Oppreſſors themſelves, when poſſeſſed of Power: Let us but ſuppoſe that when King *George* I. came to the Crown, he had found it engaged in War with two potent Enemies, by the Advice of Parliament, (which was the Caſe of King *Charles* I.) and the Parliament would not have raiſed one Penny of Money, either for the Support of the War, or the Maintenance of his Houſhold; while our good Allies periſhed for want of our Aſſiſtance; the Faction at the ſame Time, attacking and reviling his Adminiſtration, before he had been ſix Months upon the Throne, and it was impoſſible to diſcern whether it would be good or bad: Would King *George*'s Friends, in ſuch a Caſe, have thought themſelves obliged to ſtand ſtill with their Arms a-croſs; and, becauſe the Parliament proved ſullen or peeviſh, have ſuffered the Succeſſion of the *Hanover* Family to have been defeated, and his Enemies triumph over them? Would they not rather have exerted their utmoſt Efforts and raiſed Men and Money, by all the Methods they could invent, whether legal or illegal, to preſerve the Crown on his illuſtrious Head; and would they not have juſtified themſelves, as the Miniſters of King *Charles* the Firſt did, by that Almighty Plea of Neceſſity.

Far be it from me to juſtify the Ways that were taken in the Reign of King *Charles* I. for raiſing Money, ſuppoſing it were poſſible to have avoided them; but Neceſſity, it ſeems to be agreed on all Hands, will juſtify taking Meaſures that are not ſtrictly legal: And if a Prince of King *Charles*'s Wiſdom and Virtue was puſhed upon thoſe unwarrantable Ways and Means by the Perverſeneſs of a Faction; I wiſh, when ever any of his Succeſſors find themſelves in the like unhappy Situation, they may extricate themſelves out of their Difficulties by Ways leſs oppreſſive than thoſe that Prince was compelled to make uſe of. But to proceed; The Friends of Monarchy are frequently repreſented, by their Enemies, as in love with Slavery, and ready to ſacrifice their Liberties and Properties to every ambitious Prince: But I would have the Republicans know, That the Loyaliſts have as great a Value for thoſe ineſtimable Bleſſings of Liberty and Property, as any *Whig* of them all: The only Difference is, That the former apprehend their Laws and Liberties are more likely to be preſerved under a Monarchichal Form of Government; and the latter imagine, That Liberty is no where to be found but in a Commonwealth.

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For my Part, if we are to be tyrannized over, I had rather have one than five hundred Tyrants, I had rather ſee one upon the Throne, than a Tyrant in every Pariſh almoſt: But it is very notorious, there is much more Danger of Oppreſſion and Tyranny under a Commonwealth than a Monarchy; for the Weight of the Nobility and Gentry of a Nation will ever prove a Balance, ſufficient to prevent our Kings committing any great Exceſſes; they will not ſee their Laws trampled on, and their Properties invaded, without oppoſing ſuch Encroachments, and repreſenting their Grievances to the Throne; as we find by Experience they have frequently done with good Succeſs, even in the Reigns of our greateſt Princes, ſuch as *Edward* the Third, *Henry* the Fifth, that of Queen *Elizabeth*, &c. But then they were ſo wiſe to be content with their ancient Privileges, and did not attempt to ſtrip the Crown of all its Prerogatives: Where-ever this has been attempted it has always ended in Confuſion, and the Subverſion of the Government. And let the People's Grievances and Oppreſſions be never ſo inſupportable under a Commonwealth, there is no Redreſs to be expected; the Tyrants are ſo numerous, and are Men of that Wealth and Intereſt in every Part of the Nation, and have ſuch an Influence over the inferior People, among whom they reſide, that there is no contending with them: In thoſe unhappy Times, when this was our own Caſe, we ſee the State would not ſuffer the People ſo much as to petition for a Redreſs of Grievances, or find any Fault with their Adminiſtration, how deſtructive ſoever to Liberty and Property. And if we look abroad into the Commonwealths of *Venice*, *Genoa*, and *Holland*, their Governments are more deſpotick than that of the Grand Seignior; they will not ſo much as ſuffer the People to mention, much leſs oppoſe, their Adminiſtration; and if they ſuſpect any of their Subjects to have a Deſign to demand any Alteration in the Adminiſtration, they are immediately apprehended by a kind of Secret Committee, thrown into Dungeons, and perhaps put to death, without being ſuffered the Benefit of an open Trial: Theſe are ſome of the Liberties and Privileges uſually annexed to a Republican Form of Government, which ſome People are ſo fond of, and which ſurely none can heartily deſire, unleſs they expect to conſtitute Part of the State, and enjoy the Privilege of domineering over their Prince as well as their Fellow-Subjects.

Great Encomiums are beſtowed upon thoſe Patriots, who have from Time to Time contended to clip the Wings of the Prerogative, and make the Crown in a Manner dependant on the People: But what did they ever get by this Conduct? King *Charles* II. being treated in this Manner, when he ſaw it was impoſſible otherwiſe to ſupport his Dignity and Authority, and he was in Danger of becoming ſubject to the Commons, made the leading Men amongſt them his Penſioners, and by that means procured their Conſent to a Standing Army; governing

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verning as abſolutely in the latter Part of his Reign, as ever his Predeceſſors had done before the Prerogative was reduced.

Whereas had thoſe wiſe Men been content with the ancient Conſtitution, neither Penſionary Parliaments, or Standing Armies, had been thought neceſſary to force the Subjects Obedience: They need not then have raiſed Taxes to pay their Repreſentatives for doing the Buſineſs of the Court, and pay thoſe Troops that were raiſed to bridle their Fury.

Our wiſe Patriots, by aiming at an unbounded Liberty, and to be freed from the Dominion of their lawful Prince, compelled him to raiſe Forces for his Preſervation, which might have been fatal to their Liberties, if he had had any Inclination to invade them. It was happy for us, he deſired no more than that all his Subjects might be eaſy and happy, and did not make uſe of thoſe Forces to render himſelf abſolute: If he had, we might have thanked thoſe Patriots for it, whoſe Ambition in a manner forced him into thoſe Meaſures.

Give me leave to obſerve further, That the Puritans have been the moſt implacable Enemies to the Conſtitution and Peace of their own Country of any Set of Men in it ſince the Reformation: We have ſeen them in Queen *Elizabeth*'s Reign, attacking her Government, and threatening to depoſe her, unleſs ſhe would deſtroy the eſtabliſhed Church, and introduce their Sect into the Adminiſtration: Nay, we find they were ready to join with the Pope and the *Spaniard* in the memorable Year 1588. to the utter Ruin both of our Religious and Civil Rights: But the Queen by hanging up ſome of theſe ſeditious Betrayers of their Country, put a ſtop to their Encroachments, and maintained the Dignity of the Crown; and yet were her Subjects then the happieſt People upon the Face of the Earth; nor did the Nation ever make a greater Figure in the World, than under her Adminiſtration.

King *James* I. on the contrary, unhappily relaxed the Reins of Government, and ſuffered the People to diſpute and controul his Adminiſtration to ſuch a Degree, that, according to his Son's Expreſſion, *they put the Dice upon him*, and made him dependant on them.

Inſtead of the *Stuarts* endeavouring to eſtabliſh a deſpotick Power, it is evident, the Puritans and Republicans, from the Time of their Acceſſion to this Throne, have endeavoured to deprive that Family of all its juſt Rights, and entirely to ſubvert the Conſtitution in Church and State, which they unhappily effected in the Reign of King *Charles* I. And yet we have ſeen ſome of our young Nobility and Gentry, whoſe Anceſtors fell with the Crown, and in Defence of it, ſtupidly celebrating that melancholly Day as a Feſtival, which the Nation juſtly ſolemnizes as a Faſt, for the deteſted Murder of one of our greateſt Monarchs, dreſſing up Calves Heads, making Bonfires, and pouring out red Wine, to ſhew how they approved of the ſpilling the Blood of that King; and that they would gladly have embrued their own Hands in it, if they had lived in thoſe Days: What an Affront muſt this be to the *Stuarts* Race; to the Prince, who now happily fills the Throne, and even to Monarchy itſelf? For thoſe Rebels gloried, they had deſtroyed the King, and Monarchy with him; and perjured the whole Nation, by compelling them to abjure the *Stuart* Family, and all Kingly Government. 1629. 5 Car. I.

This the Saints then made the pious Teſt for admitting Men to Offices in the State, and all other Preferments; though they exclaim now againſt the Government, for requiring any Teſt of their Loyalty and Affection for the Eſtabliſhment.

I ſhall conclude theſe Remarks with ſome Account of Sir *John Elliot*, that grand Incendiary, who may be ſaid to have laid the Foundation of the civil Wars, though he did not live to ſee the glorious Confuſion he aimed at.

This Gentleman, Mr. *Echard* informs us, was not of a very ancient Family, but had a good Eſtate in *Cornwall*: That he had been a Fellow-Traveller and an intimate Companion of the Duke of *Buckingham*'s, before his Advancement, and afterwards as great a Flatterer of him as any Man: That in the ſame Pariſh with *Elliot* lived another Gentleman of a fair Character, named *Moyle*, ſometime a Member of Parliament, with whom *Elliot* having had a Difference, went to his Houſe under pretence of a Viſit, and whilſt *Moyle* was drinking a Glaſs of Wine, *Elliot* treacherouſly ſtabbed him; and leaving the Gentleman, who hoſpitally entertained him, dead, as he imagined, made his Eſcape to *London*: Where he applied himſelf to *Buckingham*, and by his Means obtained a Pardon for the ſuppoſed Murder (pretending *Moyle* had been killed in a Rencounter.) *Elliot* was obliged, however, to advance a conſiderable Sum of Money to get the Pardon expedited, leſt the Baſeneſs of the Fact ſhould be diſcovered before it had paſſed the Seals: And it was no ſooner ſealed, but *Elliot* received Advice, that Mr. *Moyle* was in a fair Way of Recovery: Whereupon he applied himſelf to the Duke again, to have his Money returned, which his Grace did not gratify him in, but procured him the Honour of Knighthood, as an Equivalent for it; which was, however, far from ſatisfying *Elliot* for the Money he had paid. He vowed, therefore to be revenged on the Duke for the Injuſtice he apprehended was done him, by one who had formerly been his Equal, and his Friend; and did not fail to make good his Threats on every Occaſion. Mr. *Moyle* out-lived this Outrage above forty Years, and gave this Relation of the Fact himſelf to the celebrated Dean *Prideaux*, from whom Mr. *Echard* had it: So that all this pretended Zeal of *Elliot*'s for his Country, was founded on Revenge; and the greateſt Patron of Religion and Liberty among the Commons, appears to have been an infamous Aſſaſſin: He afterwards died a Priſoner in the *Tower*, where he was confined for refuſing to give Security for his good Behaviour, after having been guilty of numberleſs Inſults on the Government, raiſed a Tumult in the Houſe of Commons, and laid violent Hands upon their Speaker, which was the Occaſion of his Commitment and Proſecution in the *King's-Bench*: And though the Lords afterwards reverſed the Judgment againſt *Holles* for Error, it is remarkable that they were ſo ſenſible of the Merits, or rather Demerits, of this pretended Patriot *Elliot*, that they never did reverſe the Judgment againſt him, but it remains upon Record to this Day.

The

1631. 6 Car. I. *Trial of Lord* Uchiltrie.

The Trial of JAMES Lord *Uchiltrie*, for *Leaſing-making*, and *Calumnies*, *uttered by him againſt* James *Marquis of* Hamilton, *the Earls of* Hadddington, Roxburgh, *and* Buccleugh, *tending to the ſowing Diſcord between his Majeſty and the ſaid* Scotiſh *Noblemen, at* Edinburgh, 30, *November*, 1631, 6 *Car.* I.

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The Indictment.

THE Dittay, or Indictment, ſets forth, That whereas, by ſeveral Statutes of the Kingdom of *Scotland*, it is enacted, that all Leaſing-makers, and Tellers of Lies, which may engender Diſcord between the King, his Barons, Great Men, and Lieges, ſhall forfeit Life and Goods to the King. Notwithſtanding which, the ſaid *James* Lord *Uchiltrie*, in the Month of *May*, then laſt paſſed, having heard by the Relation of *Donald* Lord *Rea*, that certain Speeches, Surmiſes, and Informations were made unto him (the ſaid Lord *Rea*) by *David Ramſay*, *Robert Meldrum*, and ſeveral other Perſons beyond Sea, in *Sweden*, *Pomerland*, and *Holland*, reſpectively; and by the ſaid *David Ramſay*, and divers other Perſons, within the Kingdom of *England*, anent ſome Plot, and dangerous Purpoſe, intended againſt the King, Queen, and Prince, and againſt the Land, by ſurpriſing the King's Houſes and Caſtles of *Edinburgh*, *Sterling*, and *Dunbarton*; and for ſeizing the Town of *Leith*. The ſaid Lord *Uchiltrie*, not contented with revealing what the Lord *Rea* had informed him of, out of a malicious Deſign, and in order to create Diſcord betwixt the Lord Marquis of *Hamilton*, the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, and his Majeſty did on the 17th of *May*, then laſt paſſed, ſignify to his Highneſs, that the Buſineſs was Treaſon intended againſt his Majeſty; and that the principal Party was the Marquis of *Hamilton*, as he was informed; and to induce his Majeſty to believe him, he delivered to the Lord Treaſurer (*Weſton*) a Liſt of Names, to ſhew his Majeſty, the Strength of the ſaid Marquis of *Hamilton*'s Party and Adherents in *Scotland*: Wherein he named the Marquis of *Hamilton*, the prime Agent, and named the Earl of *Melros*, now Earl of *Haddington*, the Earl of *Roxburgh*, and the Earl of *Buccleugh*, to be Plotters: And that upon the Marquis's Arrival at *London* from *Scotland*, the ſaid Lord *Uchiltrie* went to his Majeſty, when he was at Dinner, and boldly, and male-pertly, ſpoke theſe Words to him; *Sir, now you know the Buſineſs, but know not the Time; and therefore, Sir, either do, or die*; doing thereby, what in him lay, to move his Majeſty to take ſome ſudden and violent Courſe, for the Subverſion of the Life and Honour of the ſaid Marquis; and that the ſaid Paſſages were maliciouſly forged, invented, and practiſed by the Panel (the Priſoner), without any Foundation, or Authority, from the Relation of the Lord *Rea*, as was manifeſt, from his own Depoſitions, and by the Declaration of the ſaid Lord *Rea*, who had averred, that he knew nothing againſt the Perſon of the Marquis, but that he was as good a Subject, as any the King's Majeſty had; and that the Panel (the Priſoner) and not the Lord *Rea*, did name the Earl of *Buccleugh*, as one who would take up Arms in *Scotland*, to aſſiſt the Marquis. By which Leaſings, Calumnies, and ſlanderous Speeches, untruly plotted, deviſed, and vented, by him, againſt the ſaid Marquis of *Hamilton*, the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, his Majeſty's faithful Counſellors, and loyal Subjects he had manifeſtly controverted the Tenor of the ſaid Statutes, and incurred the Pains therein mentioned, *viz.* the Puniſhment of Death, which ought to be executed on him, with all Rigour, to the Terror and Example of others.

The Evidence produced.

The Evidence produced againſt the Lord *Uchiltrie* was, firſt, his own Examination before ſome Lords at *London*, the 20th of *June*;

The Priſoner's Examination.

wherein he ſays, that about the 7th of *May* laſt, the Lord *Rea* told him (at the *Bear*, near *London-Bridge*), that he had believed there was a Plot againſt this Land; and though he had no certain Ground for it, if he had ſtaid but five Weeks longer in the *Low Countries*, he ſhould have known the Certainty: That on the 13th of the ſame Month, he came to his, the Examinant's Chamber, and told him, he had learned more Certainty; and that the Purpoſe of the Marquis of *Hamilton*'s Levies, as divers of his Officers and Followers had informed him (the ſaid Lord *Rea*) was, that either they ſhould not go out of *England*, or *Scotland*; or, if they did, they ſhould return to *England*, or *Scotland* again, and ſurprize the King's Houſes and Caſtles in *Scotland*, *viz.* the Caſtles of *Edinburgh*, *Stirling*, and *Dunbarton*, and fortify themſelves in *Leith*, and ſhould afterwards take *Berwick*, and march into *England*, where they intended to ſeize the King's Perſon, and impriſon him; to ſend the Queen to a Cloyſter; to captivate the young Prince with his Father, and to ſtrike off the Heads of all the principal Men about the King, both *Engliſh*, and *Scots*; and particularly the Lord Treaſurer of *England*, the Earl of *Monteith*, Sir *William Alexander*, and Sir *Thomas Hope*: That the Lord *Rea*, thinking it fitter to be diſcovered by the Examinant than by himſelf, leſt thoſe, whom it concerned, might ſuſpect the Matter, deſired the Examinant to acquaint his Majeſty, or the Lord Treaſurer, therewith; and that he accordingly attended the Treaſurer, and told him, he had Something to reveal, that concerned his Majeſty, and all his Kingdoms, and Poſterity; and that the Lord Treaſurer thereupon inſtantly went up to the King, and returning, told the Examinant, that his Majeſty had given him Commiſſion to hear his Relation.

The Examinant further ſaid, that the Lord *Rea* told him, he had much of this beyond Sea, from *Robert Meldrum*, and *David Ramſay*: But that, ſince his coming into *England*, he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, Colonel *Alexander Hamilton*, and

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Captain *Douglaſs*, and had gotten ſomething out of every one of them; and that he had alſo ſpoken with the Lord *Seaforth*, and underſtood ſomewhat from him.

That, on *Monday*, the 16th of *May*, the Examinant attended the Lord Treaſurer at *Whitehall*, and told him, the Matter he had to relate concerned the Lord Marquis of *Hamilton*, and his Actions; and delivered to the Treaſurer a Liſt of Names to repreſent the Strength, of the Lord *Hamilton*'s Party and Adherents in *Scotland*: But he no ſooner mentioned the Marquis of *Hamilton*'s Name, than the Treaſurer ordered him to defer his Relation, till he had acquainted the King again: That the Examinant, attending the King, by the Treaſurer's Direction, the Thurſday following, he told his Majeſty, that the Buſineſs was Treaſon againſt his Majeſty; and the Party was the Marquis of *Hamilton*, as the Examinant was informed: That it was the filthieſt Treaſon that ever was intended; and he was ſorry any *Scotiſh* Man ſhould have a Hand in it; for it was a Shame to the whole Nation: And then the Lord *Rea* himſelf coming in, made his Relation to his Majeſty, who ſent them both to the Lord Treaſurer; and his Lordſhip directed the Lord *Rea*, to put his Relation in Writing: Whereupon the Lord *Rea*, and the Examinant, went away together, and ſat up all Night: And the Lord *Rea* firſt putting it into Writing, the Examinant wrote it out of the Lord *Rea*'s Papers, who carried it the next Day to the Lord Treaſurer; but the Examinant was not then preſent. However, attending the Treaſurer afterwards, he demanded whoſe the Hand-Writing was; and the Examinant acknowledged, it was his; and it not being ſubſcribed, the Examinant carried the Lord *Rea* to the Treaſurer's, where he read over the Paper, and ſigned it, ſaying, *He would ſeal it with his Blood.* The Examinant further ſaith, that he told the Lord Treaſurer, that the Lord *Rea* Informed him, he had yet more, and would ſay ſo much, that the Marquis ſhould not have the Face to deny it; which the Lord *Rea*, then preſent, affirmed: Inſomuch that the Lord Treaſurer ſaid, *Then is the Buſineſs at an End, and there needs no Writing.*

That the Lord *Rea* told the Examinant, on the Sunday Morning, when the Marquis of *Hamilton* arrived Poſt from *Scotland*, that the Lord *Seaforth* aſſured him (Lord *Rea*), that their Purpoſe was to take the King, the Queen, and Prince: And the Examinant demanding, how they would effect it, the Lord *Rea* replied, the Lord *Seaforth* had told him, they were great with the Earl of *Dorſet*, who had the Cuſtody of the Prince; and that he (Lord *Rea)* alſo ſaid, he was aſſured by the Lord *Roxburgh*, that the Marquis, and his Company, would haſten their Purpoſe; adding, that the *Hamiltons* had ſurely taken ſome Vent of the Buſineſs: That *Rea* alſo ſaid, Sir *James Ramſay* told him, he had 1500 Men in Readineſs; but they ſhould not come to *London*, till their Buſineſs was ready withal; which the Examinant, the ſame Morning, acquainted the Lord Treaſurer with, and wiſhed the Lord Treaſurer to adviſe the King, to go to *London*, for his Security: And that the ſame Day, when the King was at Dinner, the Examinant acknowledges he ſpoke theſe Words, *Sir, now we know the Buſineſs, but know not the Time; and therefore, Sir, either do, or die,*

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Then the Lord *Rea*'s Examination, the 21ſt of *June*, was read, wherein he acknowledged, that two or three Days before the Marquis of *Hamilton* went to *Scotland*, he (Lord *Rea)* did ſay to the Lord *Uchiltrie*, that his Lordſhip was better acquainted with the Laws of this Land, than the Examinant; and therefore deſired to know, what Danger it was, if any Man, hearing beyond Sea of things that might be dangerous to the King or State, ſhould not reveal it? To which the Lord *Uchiltrie* anſwered, *No leſs than your Head and Eſtate:* And this was all that paſſed between them, at that Time: But that going to Lord *Uchiltrie*'s Lodgings again, about ten Days after, he asked him the ſame Queſtion, and deſired his Advice: And the Lord *Uchiltrie* promiſed readily to adviſe him, when he ſhould be acquainted with the Particulars; and that he would not reveal the Matter, without his Conſent: Whereupon, he (the Lord *Rea)* told the Particulars to the Lord *Uchiltrie*, who ſaid, it was neceſſary the Matter ſhould be diſcovered, and doubted the Examinant had concealed it too long already. To which he (Lord *Rea)* replied, that conſidering it concerned one ſo near the King, as the Marquis of *Hamilton*, he thought it not fit to break it to the King himſelf, leſt his Majeſty ſhould reject it; but it was fitter for ſome other to do it; and therefore deſired his Opinion, how to diſcover it: And that the Lord *Uchiltrie*, by his (the Lord *Rea*'s) Conſent, went the next Morning to the Lord Treaſurer's, to lay the Matter before him: But the Lord Treaſurer then refuſed to hear him, till he had a Warrant from the King: And that both the Lord *Uchiltrie*, and the Examinant attending the King afterwards, at *Greenwich*, he (Lord *Rea)* made a full Relation to his Majeſty: And that the King demanding, why he had not told him ſooner of it, he, the Examinant, anſwered, that conſidering the Nearneſs of the Marquis of *Hamilton* to his Majeſty, he was afraid his Majeſty would have been impatient with him (the Examinant): That thereupon they were referred to the Lord Treaſurer, who directed him (Lord *Rea)* to put the Relation in Writing: Whereupon he and the Lord *Uchiltrie* ſat up together all Night; and the Examinant writing it firſt down, the Lord *Uchiltrie* wrote it, Sheet after Sheet, out of the Examinant's Paper, who carried it to the Lord Treaſurer; but not having ſigned it, he, (Lord *Rea)* and the Lord *Uchiltrie*, went to the Lord Treaſurer's again, two or three Days after, where he (Lord *Rea)* ſigned it, and ſaid, *He would make it good with his Blood:* That the Examinant afterwards had further Particulars from the Lord *Seaforth*, which he communicated to the Lord *Uchiltrie*, who told the Examinant, on Sunday Morning, that he had been with the Lord Treaſurer, and had told him of the Paſſages with the Lord *Seaforth*, and of the Marquis's Return from *Scotland*; and that he conceived his Majeſty might be in Danger at that Time. To which the Examinant replied, he had done ill; for there

Lord Rea's *Examination read.*

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was no ſuch ſudden Danger to be feared; and that the Examinant being the ſame Afternoon with his Majeſty, after he had been ſo adverti-ſed of preſent Danger, the Examinant told him, he had been with the Lord *Seaforth*, but had not the Certainty of things, deſiring he might go to the Lord *Seaforth*'s again, and he ſhould learn all: And his Majeſty declaring, what Danger had been ſuggeſted to him, on the Return of the Marquis, the Examinant proteſted, he knew nothing againſt the Perſon of the Marquis; but that he was, for ought the Examinant knew, as good a Subject as any the King had.

A ſecond Examination of Lord Rea.

Then a ſecond Examination of the Lord *Rea*, taken the ſame the 21ſt of *June*, 1631. was read, wherein he ſays, that having deliberately read over the Examination of the Lord *Uchiltrie*, taken the 20th Inſtant, he acknowledged, it was all true in Subſtance, unleſs in the following Particulars, *viz.* that he did not tell the Lord *Uchiltrie*, the 13th of *May*, that he had learned more Certainty than ever he had before; but that he had learnt more Certainty, ſince he came to *England*, than he had before; and that inſtead of ſaying, they intended to ſtrike off the Heads of all the principal Men about the King, the Examinant ſaid, he was informed, they would ſtrike off the Heads of the *Spaniſh* Faction; and named the Lord Treaſurer, the two Biſhops, the Earl Marſhall, the Earl of *Carliſle*, Sir *Francis Cottington*, the Lord *Monteith*, Sir *William Alexander*, Sir *Thomas Hope*, and Sir *Kenelm Digby*; and that he was ſo informed, touching the *Spaniſh* Faction, by Mr. *Meldrum*, and *David Ramſay*; and touching the *Scots*, by the Earl of *Seaforth*. He acknowledges, he ſaid, that ſince his coming to *England*, he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, and Captain *Douglaſs*, and gotten ſomewhat out of every one of them; but denied, he had ſpoken with *Alexander Hamilton*, ſince his coming to *England*.

He denied, that either he, or the Lord *Uchiltrie*, ſaid, that he could ſay ſo much, as the Marquis ſhould not have the Face to deny it; but that he ſaid, he could bring as honeſt a Man, as this Examinant, that would tell to the Marquis's Face, more than this Examinant would do: And this he meant of the Lord *Seaforth*.

He confeſſed, he ſaid, Sir *James Ramſay* told him, he had fifteen hundred Men in Readineſs; but that he would not bring them together, till the Parties in *Scotland* were firſt ready: That Sir *James* told him as much; and that there were good Officers; and the Earl of *Eſſex*, and the Archbiſhop of *Canterbury*, were Sureties for ſome of them; which was all he ſaid concerning the fifteen hundred Men.

That he was not acquainted with the Liſt of Names delivered by the Lord *Uchiltrie* to the Lord Treaſurer; nor had any thing to do therein.

A ſecond Examination of Lord Uchiltrie.

After which, the ſecond Examination of the Lord *Uchiltrie*, taken the 24th of *June*, 1631. was read; wherein he ſays, he was acquainted with the Buſineſs concerning the Marquis of *Hamilton*, by the Lord *Rea*: But that the Lord *Rea* was not privy to the Liſt of Names this Examinant delivered to the Lord Treaſurer; and that the Reaſon he did in that Paper mention the Lord Marquis, to be the prime Agent, was, the Lord *Rea*'s telling him, the Lord Marquis's Followers had ſaid, the Intent of the Marquis's Levies was to invade *Scotland*: And if, out of his Care for the King's Safety, he had gone too far, he truſted his Majeſty would impute it to his Duty.

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That being asked, Why, in the ſaid Paper, he made the Earls of *Melros Roxburgh*, and *Buccleugh*, to be Plotters, he ſaid, the Lord *Rea* told him, the Lord *Seaforth* had affirmed to him, that the Earls of *Melros* and *Roxburgh* were acquainted with the Particulars and Secrets of the Buſineſs; and that the Lord *Rea* ſaid, he could not gueſs who elſe ſhould be in the Plot, unleſs the Lord *Buccleugh*; of whom the Lord *Rea* ſaid he heard him ſpeak terrible and preſumptuous Words againſt the King, at his own Table, in *Holland*.

That he might have miſtaken, when he ſaid, they intended to ſtrike off the Heads of *All* the principal Men; for, ſince he recollected himſelf, he believed the Lord *Rea* ſaid, they would ſtrike off the Heads of *Many*.

That he did ſtill avow, he ſaid before the Lord Treaſurer, that the Lord *Rea* could ſay ſo much, as the Marquis ſhould not have the Face to deny it: And that the Lord *Rea* being then preſent, and hearing it, did not gainſay it.

A third Examination of Lord Rea.

A third Examination of the Lord *Rea*, the 24th of *June*, alſo was read; wherein he ſays, that the firſt Time the Lord *Seaforth* had any Speech with him, touching the Earls of *Melros* and *Roxburgh* being privy to the Particulars and Secrets of the Lord Marquis's Buſineſs, was on Monday, after the Marquis's coming out of *Scotland*; and that the Lord *Uchiltrie* having ſome Diſcourſe with this Examinant, who might be likely to take Arms in *Scotland*, if the Marquis of *Hamilton* ſhould take up Arms; the ſaid Lord *Uchiltrie*, and not this Examinant, named the Lord *Buccleugh*; and that thereupon the Examinant told him, that at the Siege of the *Boſch*, he heard the Lord *Buccleugh* uſe ſome Words, whereby this Examinant took him to come mal-content out of *England*.

Lord Uchiltrie's Defence.

Theſe Examinations having been read in Evidence againſt the Lord *Uchiltrie*, his Advocates (or Counſel) objected, that they ought not to proceed againſt him in *Scotland*, but in *England*; and by the Laws of that Kingdom, as the Offence is alledged to be committed there.

To which the Lord Advocate anſwered, that his Majeſty, by his Letter, had ordered the Council, that he ſhould be tried by the Laws of *Scotland*; and that his Majeſty's Letter was grounded on the Civil and Common Law.

The Priſoner's Counſel replied, That his Majeſty's Letter muſt be underſtood without Prejudice to his lawful Defence; and, that the alledged Crimes contained in the Indictment, might be lawful in *England*, though criminal in *Scotland*: That there was no reaſon the Priſoner ſhould be puniſhed in *Scotland*, for a Fact committed in *England*, not puniſhable by the Laws of *England*.

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That the Facts laid in the Indictment had no Dependance or Relation, to the Leasings mentioned in the Acts therein recited: That it was incumbent on every Subject, that should hear treasonable Speeches, to reveal them, whether they were true or false; for that the Hearer was no Judge of: This could not be construed a telling of Lies, to create Discord between the King and his People, but rather to suppress and prevent the same: That the concealing Treason was punishable by the Laws of all Nations, as well as those of that Kingdom, and particularly, by the Acts that had been cited; and consequently the Discovery of it could not be Criminal: That the same Acts that were made against *Leasing-making*, required the Hearer of Treason, to reveal it on Pain of Death; so that the Prisoner was under a Necessity of discovering it.

Reply of the King's Advocate.

The King's Advocate replied, That if the Prisoner had confined himself within his Duty of Revealing the Treason, although it had been false, he would have deserved to have been rewarded for it, rather than punished: But when he had heard only some conjectural Speeches from the Lord *Rea*, and had thereupon positively charged the Marquis of *Hamilton*, and the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, with Treason, without sufficient Grounds, adding twenty or thirty other Noblemen, as Adherents to them, and had used that Motto, *Sir, Now either do or die*, in order to incense his Majesty to take some violent Course against the Marquis's Person, or Life; this might well be interpreted *Leasing-making*, within the Acts of Parliament mentioned in the Indictment: The Prisoner was not prosecuted for relating what he had heard of the Lord *Rea*, but for the Additions and Comments he had made on that Relation.

The Prisoner's Defence continued.

The Prisoner's Counsel urged on the other Side, That he had added nothing, but what might be supported by the Relation, he had received from the Lord *Rea*; and that, if it agreed in Substance with what the Lord *Rea* had deposed, and might be fairly deduced from it, the Prisoner could be charged with *Leasing-making:* There was no Necessity of his repeating the very Words the Lord *Rea* had uttered; and they insisted, that the Lord *Rea*'s first Examination on the 18th of *May*, and signed by him, might be read in the Prisoner's Justification, which was with a great deal of Difficulty, at length, allowed to be read by the King's Advocate; in which the Lord *Rea* deposed, That while he was at *Stockholm*, Colonel *Alexander Hamilton*, Brother to the Earl of *Haddington*, Sir *James Hamilton*, Son to the said Earl, and two more of the *Hamiltons*, who were Officers in the King of *Sweden*'s Army, quitted that Service, to serve under the Marquis of *Hamilton:* That drinking Healths one Night with the said *Hamiltons* and *David Ramsay*, the Examinant asked Colonel *Alexander Hamilton* the Marquis's Christian Name, who answered, *James, by the Grace of God*; and Sir *James* added, *King of* Scotland, *and it should be so:* That the same Night, being alone with *David Ramsay*, he told the Examinant of many Abuses in the Court of *England*, laying the blame upon the Lord Treasurer, and said, Popery and *Arminianism* had ever come from the Bishops: That there was nothing looked for, but Desolution and Change in Religion; and that the poor Soul the King was blinded to his Ruin; and he had retired from Court, because no honest Man could live there: And when the Examinant answered, there was no Remedy but Patience, *Ramsay* replied, By God, *Donald*, I will use your own Phrase, *We must help God to amend it:* That demanding, what Content my Lord Marquis had at home, he said, None; for the King had forced him to marry a Wife that was a very Beast: Adding, that the Lord Marquis was a good Protestant, and before it were long, he would let the World see his Aim was the Defence of Religion: To which the Examinant answered, it availed them little to make the Gospel a fair Passage in *Germany*, if they lost it at home: Whereupon *Ramsay* said, There were many honest Men in their Land, and the Marquis would use his Army to protect them, which was his only Aim: That in *July* the Examinant met Mr. *Meldrum* at *Stockholm*, and asking him, what News from *England*, he answered, Matters were worse and worse; the King gave greater Way to *Papists* and *Arminians* than before: That *Cottington* was gone to beg Peace with *Spain:* However, the Marquis governed all; was made Keeper of *Windsor*, and Knight of the Garter, and was to be Admiral of *England:* That the Examinant telling *Meldrum*, his Cousin *David Ramsay* had ended his Negotiation to his Mind; and that *Alexander Hamilton* was to get Powder, Arms, and Ammunition, for the Marquis, from *Sweden*; *Meldrum* threw down his Cap, cut a Caper, and said, Good News; I am made for ever: But, good my Lord *Rea*, is this true? To which the Examinant answered, Yes; for I have one Double of the Contract; I am engaged in the Business to *David Ramsay*, *Alexander Hamilton*, and Sir *James Hamilton*, and by Letter to my Lord *Hamilton*. O! my Lord, said *Meldrum*, that was the Work of God, and not Man, to inspire your Lordship to go with us.

An Examination of Lord Rea *read as Evidence for the Prisoner.*

That *Meldrum* told *Lindsay*, a friend of the Examinants, That six thousand trained Soldiers would do the Turn, with their own Faction in the country: That the next Day *Meldrum* said to the Examinant, that King *Charles* was good for nothing; created for nothing but Desolations, and undoing of Kingdoms, Religion, and People: There was no way but to immure him, or clap him in a Dungeon, which was easy to be done; for after the Men were listed in *Scotland*, they might take a Month's Time to learn to handle their Arms at *Leith*, without Suspicion; and might seize on the Castles of *Edinburgh*, *Stirling*, and *Dumbarton*, in one Night; and having fortifyed *Leith*, and taken *Berwick*, they might afterwards march into *England:* That *Meldrum* added he was writing a Declaration of the Justice of the Marquis's Quarrel, with the tyrannical Usage and Sufferings of the Church under King *James*, and now worse groaning under his Son, with the *Hamilton*'s clear Title to the Crown; and that nine of the best Earls in *Scotland* would live, and die with them: That the Body of *England* was also with them, and some

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of the Nobility, for evil Will to the Treaſurer: That the next Day, there coming News of the Birth of the Prince, the Examinant demanded, if that would cool the Marquis's Intentions; whereupon *Meldrum* ſighed, and ſaid, Not if the king and Queen of *Bohemia* would give their Daughter to the Marquis, as they had promiſed.

That meeting *Meldrum* afterwards at *Leſlie*'s Tent, *Meldrum* took the Examinant aſide, and related ſome Converſation he had with the Secretary of *Sweden:* Said, he told the Secretary, that it was greatly for the Advantage of his Maſter, whoſe Ambition was without Limits, that the Marquis ſhould raiſe a War in *Britain*; for, if the king of *Sweden* would reduce *Denmark*, his *Britiſh* Majeſty would not be able to aſſiſt his Uncle; and the *Swediſh* Secretary anſwered, That we care not for, nor do we fear, your king; for if he would not help his own Siſter, he will never help his Uncle: That *Meldrum* added, they intended to caſt the prince into Priſon with his father, and ſend the Queen home to her mother: That they would impriſon their Adverſaries, till all was their own; and the Marquis would take Pledges of all that ſtood Neuter.

That the Examinant going afterwards to *Holland*, met *David Ramſay* at *Amſterdam*, who brought him a Letter of Compliment and Thanks from the Marquis: Told him, all went right with the Marquis; and he had gotten ten thouſand Pounds from the King, and the Wine-Cuſtoms of *Scotland* for ſixteen Years, which he would ſell: That all Things went on without Obſtacle; they only ſtaid for Arms and Ammunition, eſpecially Powder, and deſired the Examinant to Preſs the *Swediſh* Ambaſſador hard for ſome: That asking where their Forces were to meet, *Ramſay* ſaid upon the Sea, and afterwards Land in *Scotland* or *England*; but he would ſay no more: The Marquis would communicate things to him that he durſt not.

Ramſay alſo ſaid, That *England* had made a Peace with *Spain* very prejudicial to the *Hollander:* That *Carliſle*, *Cottington*, *Kenelm Digby*, and the *Spaniſh* Faction, had prevailed on the King to bar the *Hollander* from Fiſhing, which fell out luckily for them; and deſired the Examinant to make an Intereſt with the Prince of *Orange* and the States, to aſſiſt the Marquis; which he did.

That at the Examinants coming to *England*, he waited on the Marquis, who returned him Thanks, and ſaid, he would detain him with him, aſſuring the Examinant that he that would hazard himſelf with him in this Buſineſs, it ſhould be a tye to him and his Poſterity, to hazard his Fortune and Eſtate with him and his.

That the Marquis going down to *Greenwich* in a Barge, with Sir *James Ramſay*, Sir *James Hamilton*, and ſome other *Scots* Gentlemen, the Marquis's Dependants, it was moved, If they went to make an Inſurrection, where they ſhould begin; and the Marquis anſwered, he would march to *London* directly; and the ſame Day the Marquis told the Examinant, he would ſell the Wine-Cuſtoms, for he expected no more from *England*: That Captain *Douglaſs* told the Examinant, that they ſhould have a hundred Barrels of Powder from the King, and they would make a ſhift for Arms: That Sir *James Ramſay* told the Examinant the laſt *Sunday* at *Greenwich*, he had 1500 Men in Readineſs on a Week's Notice, or leſs; and he ſtaid only till he heard the Men of *Scotland* were ready; and that he ſhould meet them at the Rendezvous at *Norwich*; and Sir *James Hamilton* told him, the *Engliſh* Rendezvous would be at *Harwich*: That the Earl of *Roxburgh* told the Examinant, that he, and others, the Marquis's Friends, were at firſt againſt theſe Courſes; but ſince they ſaw his Lordſhip ſo far engaged, and, that he only aimed at the Glory of the God, he and all his friends would put to their helping Hand: That the Marquis thought himſelf ever bound to the Examinant, and ſo did all his Friends; and he (Lord *Roxburgh*) aſſured him, he truſted him; and that he never took a more faſt and real Friend by the Hand.

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After the reading this Depoſition of the Lord *Rea*'s, the King's Advocate obſerved, that it was plain the Priſoner had affirmed the Treaſon poſitively; and that the Marquis was prime Agent; together with the Speeches ſpoken to his Majeſty on the *Sunday* after Dinner; as alſo his calling the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, Plotters: And that he had no Warrant from the Lord *Rea* for theſe Allegations; for the Repreſentation made by the Priſoner of the prime Agent and Plotters, was given in on the 16th of *May*, whereas, the Lord *Rea*'s Examination was not given in till the 18th of the ſame Month.

To this the Priſoner's Counſel anſwered, that when he charged the Marquis, and the other three Lords, with Treaſon, he did not do it of his own Knowledge, but added, *as he was informed*, which acquitted him of being a Leaſing-maker, or Forger of Lies: And, that he ſpoke it by Information, was clear by his own Depoſitions, as well as by the Depoſition of the Lord *Rea*, who acknowledged the Priſoner's Depoſition to be true, in all Points, to the beſt of his Knowledge: Nor was it ever heard, or practiſed, that any Subject being neceſſitated by Law to reveal what concerned the King or the State, and revealing the ſame with his Informer, and conſtantly abiding thereby, and willing to maintain the ſame upon any Torture, or Trial, whatever, that the Revealer, upon the Party's Denial, ſhould be called in Queſtion of his Life, as the Deviſer and Forger: And, if this ſhould now be made a Precedent, Conſpirators againſt the Government might be ſecure; becauſe no Man durſt reveal their Treaſons for the future.

And, whereas it is objected, that the Priſoner could not have his Information from the Lord *Rea*, becauſe he gave in a Liſt of the Lords concerned in the Plot on the 16th of *May*, and the Lord *Rea*'s Depoſitions were not made till the 18th; they anſwer, that the Lord *Rea* gave this Information verbally to the Priſoner, on the 13th of *May*, though he did not put it in writing till the 18th; and

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this appeared from the Priſoner's Examination, and by the Account the Lord *Rea* gave of the Conſpiracy, on the 14th and 15th of that Month: Who then declared, that the Subſtance of what the Priſoner had related was true.

As to the Repreſentation, and Liſt of Names given in by the Priſoner, his Counſel anſwered, That theſe were written and given in upon the Lord Treaſurer's enquiring into the Friendſhips, Blood, and Intereſt of the Lord Marquis, that he might make an Eſtimate of his Power and Influence in *Scotland*, in caſe his Friends ſhould join him; and this was clear from the Writing itſelf, wherein it is ſtiled a Repreſentation, and not an Information, or Accuſation; there was no Intention to caſt any Reflection on the Lord Marquis, or the other three Noblemen, by that Writing.

As to the Words *do or die*, it was a uſual Phraſe, and imported no more than *ſee to your Safety*; being a faithful Advice to his Majeſty, and not a malicious Counſel to draw Miſchief upon any other: He had no Intention to inſtigate, or ſtir up his Majeſty, to any violent Courſe againſt the Marquis's Life and Honour; but to prevail on his Majeſty to go to *London* for his Security, as appeared by other Words he uſed at the ſame Time: Nor could the Words, *do or die*, be interpreted Leaſing-making, becauſe they were not Words of Affirmation, but of Counſel or Advice: That whether the Lord *Rea*'s Information was true or falſe, the Priſoner could not be charged with Leaſing-making, ſince it appeared, what he had related came from the Lord *Rea*, who, at his firſt Examination, when the King asked him, Why he had not revealed the Matter ſooner, anſwered, becauſe it concerned the Marquis of *Hamilton*, who was ſo near to his Majeſty; from whence it appears, that the Lord *Rea* accuſed the Marquis, and that the Priſoner only revealed what he had from that Lord: And, as for the Lord *Rea*'s ſaying, he knew nothing againſt the Perſon of the Marquis afterwards, it was not to be regarded, becauſe it contradicted what he ſaid before. It was inſiſted alſo, that the Lord *Rea* was but one Witneſs; that he was not upon Oath; and, that he ought to have given his Teſtimony *viva voce:* And, beſides, his Evidence ought not to be admitted in this Caſe, becauſe it tended chiefly to excuſe himſelf, and to aſperſe the Priſoner, who, according to his Duty, had revealed theſe Treaſons, as he heard them, to the King, which he was obliged to do, whether they were true or falſe: The Lord *Rea* was to anſwer for the Truth of the Facts he acquainted the Priſoner with.

The King's Advocate replied, That the Priſoner could not juſtify himſelf by any Thing the Lord *Rea* had related to him; for he received no poſitive Information from the Lord *Rea* againſt the Marquis; or had any Warrant from him to call him Party or Prime Agent; and in Matters of this high Nature, ſuch as Treaſon, no Illation by Conſequence was to be permitted, at the Peril of him who made the Inference. That in all *Rea*'s written Relation, there was not a Word ſpoken directly againſt the Marquis, neither by *David Ramſay* or by *Robert Meldrum*; but only ſome mad frantick Speeches uttered by *Meldrum* on his own Imagination, or Wiſh to have it ſo, for the Diſturbance of the State, by expreſſing the manner, how ſuch an Enterprize, according to his fooliſh Opinion, might be performed. Not a Word of *Meldrum*'s hearing that from my Lord Marquis, or from any, who declared they heard the Marquis ſpeak it: And, as to *Ramſay* the worſt that he ſaid was, that the Marquis was diſcontented; and, that his Deſign in levying Forces was for the Protection of Religion, meaning that glorious Enterprize for the Aſſiſtance of the King of *Sweden*, which could never ſupport the Speeches ſpoken by the Priſoner to his Majeſty, *viz. That it was a Treaſon*; *an odious Treaſon*; *and the Lord Marquis a Party*; *That it was the filthieſt Treaſon that ever was intended*; *and, that he (the Priſoner) was ſorry that any* Scotchman *ſhould have fallen into it, it being a Shame to the whole Nation.* Which was a poſitive Affirmation, *not as the Priſoner was informed*, but as he himſelf did infer, upon the Relation made to him by the Lord *Rea*, who would give the Priſoner no Aſſurance he had any certain Grounds, as was manifeſt from the Priſoner's Depoſition on the 20th of *June*.

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The Priſoner's Counſel ſtill inſiſted, that he could not be charged with Leaſing-making, becauſe the Lord *Rea* was preſent, when he informed the Lord Treaſurer and the King of the Treaſon, and did not contradict any Part of the Information, but aſſented to the Truth of it: That the Form of Speech was not in queſtion here, but the Matter; and if the Priſoner had reported in other Words, or by a Deſcription, or Paraphraſe, that which the Lord *Rea* related to him, without changing or altering the Subſtance, he had committed no Fault, nor could be eſteemed a Leaſing-maker.

The Priſoner, having repeated the Subſtance of his Defence to the Jury, added, that he did not charge the ſaid four Noblemen with Treaſon; he only charged the Lord *Rea* as his Informer and Author; humbly atteſting, that if the Lord *Rea* contradicted him in any eſſential Points, he did him Wrong; and, if his Majeſty would pleaſe to let the Lord *Rea* be confronted with him, his Innocence would appear: But, if not, he was ready to hazard his Life to the Glory of God, and the clearing the Truth of the Buſineſs, with a Proteſtation, that he carried no Malice againſt the Lord *Rea:* That, if the Buſineſs could not be decided this Way; or if his Majeſty was pleaſed to admit of Torture before a Trial by Duel, he (the Priſoner) was ready to bear out the Torture with him, and to be tried thereby with the ſaid Lord *Rea*.

Then his Majeſty's Letter to the Privy-Counſel of *Scotland* was read, wherein he declares, the Marquis of *Hamilton*, and the other three Lords, innocent of what they were accuſed; and that the prime Informer had cleared them upon Oath, teſtifying them (as his Majeſty knew them to be) as good and faithful

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Subjects as were in his Kingdoms: And whereas he had formerly recommended to them, the promoting the Levies, and Tranſportation of the Men that were to ſerve under the Marquis; he again, required them to contribute their beſt Help and Authority to effect the ſame.

Dated at Greenwich, *the* 29*th of* June, 1631.

After which, the Lord Advocate ſummed up the Evidence for the four Lords, and made his Obſervations upon it, as the Priſoner's Counſel did on his Part. But I do not meet with any Arguments, but what had been made uſe of before, and, therefore, it is not neceſſary to take any further Notice of them.

The Court being adjourned to the 1ſt of *February*, I preſume the Jury then found the Priſoner Guilty; but the Editor is perfectly ſilent in that Matter, and only relates, that he was then ſentenced to perpetual Impriſonment; and, it appears, he remained a Priſoner in *Blackneſs* Caſtle twenty Years.

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Remarks on the Trial of the Lord Uchiltrie.

As I cannot pretend to any Knowledge in the Laws of *Sotland*, my Remarks on this Trial will be but ſhort. It muſt be confeſſed, that there are ſome Things that appear very extraordinay in it; and, particularly the ſending down a Nobleman to *Scotland*, to be tried in that Kingdom for a Fact committed in *England*. Nor was it leſs ſtrange, that he ſhould be tried for his Life, for revealing a Treaſon, when he produced the Perſon himſelf who gave him the Information, and actually atteſted the Subſtance of it: The Influence of the *Hamiltons*, and his Majeſty's Confidence in them, was certainly very great at that Time, and their ſubſequent Conduct gave the World but too much Reaſon to ſuſpect, that the Lord *Uchiltrie* had very hard Meaſure. I ſhall ſay no more but leave the Reader to judge of the Caſe from theſe Proceedings, and the Hiſtory of this Reign.

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Lord Audley's *Trial for a Rape, and Sodomy.*

The Trial of MERVIN Lord AUDLEY, Earl of *Caſtlehan*, for a *Rape* and *Sodomy*, before the Lord Keeper *Coventry*, Lord High Steward, and the reſt of the Peers commiſſioned to try him, 25 *April*, 1631. 7 *Car.* I.

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Three Indictments found againſt him.

THREE Indictments had been found againſt this Lord by the Grand Jury at the preceding *Lent* Aſſizes for *Wiltſhire*. The firſt for a Rape on his own Wife, whom he held by Force, while one of his Servants lay with her: and the other two Indictments were for Buggery with a Man.

Reſolutions of the Judges, in Caſes of Rape and Sodomy.

Before the Trial, the Judges came to the following Reſolutions, on certain Queries, ſent them by the Lord High Steward:

1. That a Peer could not be tried by a common Jury, but muſt be tried by his Peers.

2. That a Peer could not challenge any of his Peers.

3. That a Peer could not have Counſel, but on Points of Law.

4. That his own Examinations taken without Oath, might be read againſt him; but the Examination of others muſt be upon Oath.

5. That the Wife, in Caſe of a Rape, being the Party wronged, may be Evidence againſt her Husband.

6. That where one ſtood mute in a Rape, he might have his Clergy; but not in Buggery.

7. That to denominate the Offence a Rape, there muſt be Penetration.

8. That the Lords Triers might eat and drink before they agreed; but could not ſeparate, or adjourn, till they gave their Verdict.

9. That a Peer could not be convicted by leſs than twelve Peers.

10. That if a Priſoner ſtood mute in an Appeal, he muſt be hanged; for that it was an Attainder.

11. That a Peer ſtanding mute in an Indictment, might be preſſed to Death.

12. That the Lord High Steward, after a Verdict, might take Time to adviſe upon a Point of Law; and his Office continued till Judgment given.

It was reſolved alſo, That if a Woman was a Whore, ſhe might however be raviſhed: But it was a good Plea for the Man, that ſhe was his Concubine. And that, if a Man took a Maid by Force, and raviſhed her, and ſhe afterwards gave her Conſent, and married him, this would not purge the Offence, but it was ſtill a Rape.

The ſaid ſeveral Indictments being certified, and brought into Court, and the Priſoner commanded to the Bar, the Evidence was produced: And firſt, the Examination of the Lady *Audley*, as to the Rape, who depoſed, that her Lord (the Priſoner) called his Servant *Brodway*, into his Bed while ſhe was aſleep: That ſhe waked, and made all the Reſiſtance ſhe could; but his Lordſhip held both her Hands, and one of her Legs, till *Brodway* lay with her: That, as ſoon as ſhe got from him, ſhe would have killed herſelf with a Knife, and that *Brodway* forced it from her. *Brodway*'s Examination alſo was read, who confeſſed, that his Lordſhip called him into his Bed, and bid him lie with his Lady; and that he did lie with her, whilſt his Lord held one of her Legs and both her Hands.

The Lady's Evidence of the Rape.

The Raviſher's Examination read.

As to the Sodomy, *Brodway* depoſed, That the Earl uſed his Body as the Body of a Woman; but never pierced it, only emitted between his Thighs.

Evidence of his Sodomy with Brodway.

Fitz-Patrick, another Servant, depoſed, That his Lord had twice committed Sodomy with him (the Deponent): That *Henry Skipwith*, another Servant, had lain with the Lady *Audley*, by his Lord's Command, and in his Preſence: But the Lady, in her Examination, ſays, ſhe cried out, and that *Skipwith* did not lie with her.

With Fitz-Patrick.

The Lady *Audley* alſo depoſed, That the firſt or ſecond night after ſhe was married, Her

Evidence of the Pains Lord Audley *took, to debauch his Wife and Family.*

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His Son's Wife abuſed. *Skipwith* alſo depoſed, That his Lord made him lie with the young Lady *Audley*, his Son's Wife, who was then but twelve Years of Age: That he could not enter her at firſt, and the Lord *Audley* fetched Oil to open her Body, but ſhe cried out, and he could not enter her yet; then his Lord ordered Oil to be brought a ſecond Time, and the Deponent entered her.

The young Lady alſo depoſed, That the Lord *Audley* ſaw *Skipwith* lie with her ſeveral Times; and, that nine Servants of the Family alſo had ſeen it: That ſhe had no other Maintenance than what ſhe had from *Skipwith*; and that, among other Arguments the Priſoner uſed to make her lie with *Skipwith*, he told her, her husband did not love her; and threatened to turn her out of Doors, if ſhe would not: Adding, that he would tell her Husband ſhe did, if ſhe did not; and confirmed the Circumſtance, of their uſing Oil to penetrate her Body.

That the Priſoner made his Servants lie with a Whore before him. *Fitz-Patrick* alſo depoſed, That his Lordſhip kept a Whore in the Houſe; and, that he made four or five of his Servants lie with her in his Preſence; and his Lordſhip lay with her in their Sight.

Other Points of Law reſolved by the Judges. The Judges Opinion being demanded on ſome Parts of the Evidence, reſolved, That it was Buggery within the Statute, where the Body is uſed ſo far as to emit thereon, without Penetration: And ſo, where there was an Emiſſion upon a Woman's Belly, it ought to be adjudged a Rape: And that in a Rape a Woman is not limited to any Time to make her Complaint, if the Proceſs be by Indictment; but in an Appeal ſhe is.

Lord Audley's Defence. The Lord *Audley*, in his Defence, ſaid, That his Wife's Teſtimony ought not to be regarded, ſince ſhe had confeſſed her lying with *Brodway*. To which it was anſwered, he could not urge that Fact in his Defence, ſince he had forced her to ſuffer it. Then he ſaid, that his Wife and his Servants were not competent Witneſſes; and that they were put upon practiſing againſt him by his Son, who ſought his Life: Adding, That his Wife had been falſe to his Bed, and had a Child in his Abſence; and then made Proteſtations of his Innocence. But Woe to that Man (he ſaid) whoſe Wife and Servants ſhould be admitted Witneſſes againſt him, and whoſe Son conſpired his Death! His Son was now come of Age, and wanted his Lands, and his Wife a young Husband, now he was grown old, and had therefore plotted his Deſtruction.

He is convicted both of Rape and Buggery. The Lords Triers having been withdrawn ſome Time, returned, and were unanimous, in their Opinion, that the Priſoner was GUILTY of the Rape: But as to the Sodomy, eleven of his Peers were of Opinion, that he was NOT GUILTY, and ſixteen declared him GUILTY; which Difference of Opinion ſeems to have ariſen from the Evidence, that *Brodway* gave, that the Lord emitted between his Thighs, but never penetrated him. 1631. 7. Car. I.

He is executed. Judgment was afterwards paſſed upon the Priſoner, that he ſhould be hanged: However, he obtained the Favour of being beheaded; when he profeſſed himſelf perfectly innocent of the Crimes he was charged with.

Fitz-Patrick *tried, and convicted of Sodomy.* The Lord *Audley*'s two Servants, *Lawrence Fitz-Patrick* and *Giles Brodway*, were brought to their Trials, the firſt for Sodomy; and the other for a Rape, *June* 27. 1631, when *Fitz-Patrick*'s Confeſſion was produced againſt him, as Evidence of his having committed Sodomy with his Lord; and the Jury deſired to be informed, if the Perſon who ſuffered the Buggery to be committed upon him, could be ſaid, to commit Buggery, as the Words of the Statute were. To which the Lord Chief Juſtice anſwered, *Another Point of Law reſolved.* That every Acceſſary to a Felony, was a Felon in Law: And the Priſoner voluntarily Proſtituting his Body, when he was not only of Underſtanding and Years, to know the Heinouſneſs, of the Offence, but of Strength to reſiſt his Lord, he was guilty of Buggery.

Fitz-Patrick's *Defence.* The Priſoner in his Defence inſiſted, That the Evidence he had given for the King, at his Lord's Trial, ought not to be produced againſt him at a Trial for the ſame Fact: But the Court anſwered, it might; and that it was ſufficient to convict him: Whereupon the Jury found him GUILTY.

Brodway *tried, and convicted, of a Rape.* At *Brodway*'s Trial the Lady *Audley* appeared in Court, and gave the ſame Evidence of the Priſoner's committing a Rape upon her, while her Husband held her, as ſhe had done at her Lord's Trial: And the Court demanding, whether the Priſoner entered her Body when he forced her, ſhe anſwered, He did; and ſhe intended to have expreſſed as much at the Lord *Audley*'s Trial: And *Brodway* having confeſſed as much before, the Jury found him *Guilty*; and they were both hanged, confeſſing the Facts at their executions. *They are both executed.*

Remarks on the Trial of Lord Audley, and his Servants. In theſe Trials it appears, That Emiſſion, either in Rape, or Buggery, compleats the Offence, though there were no Penetration; for Emiſſion is ſaid to be, *prima facie*, an Evidence of Penetration. But where it was poſitively ſworn, that there was no Penetration, as in the Trial of this Buggery, the Evidence ſurely ought to have been taken entire, and no Preſumption allowed againſt poſitive Proof. And, when both *Brodway* and *Fitz-Patrick* had been Evidences, for the King againſt the Lord *Audley*, it ſeems a little hard, to produce their own Depoſitions againſt themſelves, and hang them upon that Evidence. Wherever an Offender is made an Evidence againſt his Accomplice at this Day, his Life is ſpared: Nor is it any Objection to his Teſtimony, that he ſwears to ſave his own Life; though, were he convicted, or but indicted for the Offence, it is admitted, he could not be a Witneſs againſt his Fellow-Priſoners: But, for my

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my Part, I cannot see why his Testimony is not as good, after he is indicted, as before; for, in both Cases, he gives his Evidence to save himself.

It may be gathered also, from these Trials, that this old lascivious Lord had continued these infamous Courses in his House for many Years; for the Lady deposes, that he proposed his Servants lying with her, and insisted on her submitting to their Lust, the very first or second Night of their Marriage. And upon this, it appears to have been made a Question, Whether the Lady should be admitted an Evidence of the Rape on her Body, after so many Years elapsed, when she had never complained of it before? And, though it was resolved she might; yet, it is allowed to be a strong Presumption against a Woman, if she make no Complaint in a reasonable Time. Indeed, it seems pretty plain, that this Lord had been so successful in debauching his Family, and contributing to his own Dishonour, that he had made them almost as bad as himself: The Lady, after she had been exposed to his Servants, and forced to lie commonly in the same Bed with them and her Lord, seems to have lost all Modesty at length, and to have submitted to their Embraces: For he insists upon it in his Defence, that she was a leud Woman, and was got with Child in his Absence; which, probably, was the Occasion of that Question, Whether a Woman, that was voluntarily a Whore to some, should be allowed to swear a Rape against others? And we find the Lady insisting, that she never had submitted to any Man till she was ravished by *Brodway*; which seems to admit, she did afterwards: And we find that poor young Lady his Son's Wife, acknowledging, that after *Skipwith* had once lay with her, she submitted to his Embraces frequently, by her Father-in-Law's Command, even in the Presence of this Lord and his Servants; which must certainly give his Son, the young Lord *Audley*, the last Uneasiness, and put him upon prosecuting his Father. Another Reason, that the Lady and her Son commenced this Prosecution, after they had forborne so long, was, that they saw his Lordship settling great Part of his Estate upon that infamous Pack of Servants, who had been the Partners of his Crimes, and that they should be reduced to a starving Condition, by his Bounty to them, if there was not a Stop put to it. And though it may be objected, that the Son's impeaching his Father was the Way to lose his Estate, which would be forfeited to the Crown by his Conviction; there was no doubt to be made, but so virtuous a Prince as King *Charles* I. would restore it to the Son, who had been so notoriously wronged by his Father, both in the debauching his Wife, and squandering away the Estate of the Family on such vile Wretches.

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Sherfield's *Trial.*

The Trial of HENRY SHERFIELD, Esq; Recorder of *Salisbury*, for *Breaking a painted Glass-Window in the Church of St.* Edmonds *in the said City*, before the Court of Star-Chamber, 6 *Feb.* 1632, 8 *Car.* I.

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The Information.

THE Information, exhibited by Sir *Robert Heath*, the Attorney-General, set forth, That, whereas his Majesty was supreme Head of the Church: That all Churches were sacred, and both founded and maintained by Regal Power; and that no Person ought to make any Alterations in the Structure or Ornament of Churches without Licence of the Bishop of the Diocese, or the Ordinary for the Time being, who derived their Authority from the King: Nevertheless, the said *Henry Sherfield*, the Defendant, being an Inhabitant of the said Parish of St. *Edmonds*, did, in *January*, in the 5th Year of this King, conspire with some factious Persons, to deface a Window in the said Church, which was an ancient fair Window, containing the History of the Creation: And that notwithstanding the Bishop of *Sarum* commanded the contrary, and made a publick Act thereof, the Defendant, in *October* following getting the Keys of the Church, locked himself in, and there beat down the said Window, and utterly defaced it; and afterwards boasted that he was a Defacer of Idolatry; for which Offence the Attorney-General demanded Justice.

The Defendant's Answer.

To this Charge the Defendant put in his Answer, and said, that the Church of St. *Edmonds* anciently belonged to a Monastery, and with it came to the Crown in the Reign of King *Henry* VIII. and there remained till King *James* granted it to *Gouge* and *Lloyd*, who afterwards granted it to *Bartholmew Tookey*, and others, to the Use of the Parish of St. *Edmonds*; so that the Right of the Church was in the Parishoners (of whom he was one) and they were seized thereof, as of their Lay-Fee; and that the said Church was exempt from the Jurisdiction of the Bishop of *Sarum*: That they, as lawful Owners, had Power, without the Bishop, to take down or set up any Window, and to do any other thing in repairing, or adorning the said Church, and for *Reformation* of such Things as were amiss in the same.

That the Parishioners and Vestry-Men of the said Parish, had, Time out of Mind, made Orders for the making of new Windows, for Alterations in the Seats, and many other Things for Ornament, and otherwise, without the Licence of the said Bishop, or any other Ordinary.

That as to the Window, said to contain the History of the Creation; it was not a true Relation, or agreeable to the Description contained in the Books of *Moses*: That there was the Figure of a little old Man in a blue and red Coat, for God the Father. And in placing the several Days Works of God in the

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Creation, they had ſet the fourth before the third; and that which was done on the 5th Day, to be done on the 6th Day: And in one Place God the Father was repreſented as creating the Sun and Moon, with a Pair of Compaſſes in his hand, as if he had done them according to Geometrical Rules.

That it was one of the faireſt Windows in the Church, but an ordinary Window, and the Damage done to it very inconſiderable: And he conceived, the defacing this prophane Repreſentation of God the Father, was not ſo heinous a Crime as to deſerve the Cenſure of that Court: That, in his Judgment, it was utterly unlawful to make ſuch Repreſentations of God the Father; and he looked upon himſelf to be juſtified in defacing it, by the Orders iſſued in Queen *Elizabeth*'s Reign, for taking down and aboliſhing of Superſtitious Images and Pictures, eſpecially in Churches: That he had alſo the Authority of a Veſtry, for doing it; which being aſſembled in *January*, 1629. ordered, that the Defendant might, if he pleaſed, take down the ſaid Glaſs Window, ſo as, at his own Coſt, he repaired the ſame with plain Glaſs: And that the Glazier might not miſtake the Window, he confeſſed he pulled down with his Staff, two or three ſmall Quarreys of Glaſs, and ſo left it to the Church-wardens, to repair it.

That the Defendant's Seat in this Church happened to be ſo placed, that he had the ſaid Window always in his Eye, which had troubled his Conſcience for twenty Years; and this had induced him to procure the ſaid Order of Veſtry: That he had done it without any Diſturbance; not to arrogate to himſelf any Authority, but as bound to do what he did, to preſerve a good Conſcience: That he, and the other Defendants, were Juſtices of Peace, and not altogether private Perſons, and were alſo entruſted by the Pariſhioners to ſee the thing done.

And he denied, that the Biſhop of *Sarum* ſent to him, to forbid his taking the Window down, or that he had any Notice of ſuch Inhibition: But, that on the contrary, he often attended the Biſhop, and his Lordſhip never mentioned the thing to him; and therefore the Charge, that it was done againſt the Biſhop's Directions, was not true: But this Defendant did aver, that what he had done, was lawfully done: And to all the other Offences he pleaded NOT GUILTY.

The Solicitor's Obſervations on it.

Upon reading the Anſwer in Court, the Solicitor-General obſerved, that the Defendant had confeſſed the Charge, and juſtified it; ſo that there was no Occaſion for any further Examinations, or Interrogatories; the ſole Queſtion was, Whether a Pariſhioner might of himſelf pull down, and ſet up, what he conceived to be idolatrous, and ſo take upon him to be a Reformer?

The Evidence againſt the Defendant.

Then the Depoſitions of the Witneſſes were read, who teſtified, that a little after *Michaelmas*, about Four in the Afternoon, the Defendant went to the Sexton's, and having gotten the Key of the Chruch-door, locked himſelf into the Church, and ſtanding upon one of the Seats, broke the Window with a little black Staff, with a Spike at the End of it: That while he was doing this, he fell off the Seat, and hurt himſelf to that Degree, that he lay groaning on the Floor a conſiderable Time, and was carried home on Horſeback; and that he was forced to keep his Houſe for a Month: That the Window was broken in eleven Places; and that after this, the Windows of the Church were broken by others: Inſomuch that, they were forced to ſet a Watch for a Fortnight, to prevent further Miſchief.

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Another Witneſs depoſed, that he heard the Defendant ſay, he would have taken down the Window, but the Biſhop's Chancellor oppoſed him, though he knew not why he ſhould; for it was a Lay-Fee.

Another depoſed, that Mr. *Sherfield* moved the Veſtry about this Matter; and they all conſented to it, except two, who ſaid, they deſired to have the Biſhop's Leave for doing it; and *Sherfield* anſwered, *Do not trouble yourſelves; I will give my Lord Biſhop Satisfaction:* That the Deponent was afterwards Church-warden of the Pariſh; and the Biſhop, having heard of the Order of Veſtry, ſent for him, and commanded, that it ſhould not be executed; and that the Biſhop made a publick Act thereof. The Counſel for the Biſhop alſo acknowledged, that the Church was a Parochial Church, and ſubject to the Biſhop's Juriſdiction; and that their Client was miſtaken in that Point, when he put in his Anſwer; and did not now inſiſt on it.

Obſervations of the King's Counſel on the Evidence.

Then the King's Counſel obſerved, that the Queſtion was not, what was fit to be in a Church; but that he had taken upon him to determine, what was fit: That the Church was governed by Biſhops, and this was a Parochial Church, the Defendant knew very well, being himſelf a Pariſhioner; and though his Counſel declined it, his Defence was, that it was a Lay-Fee, and that he had Authority to pull down the Window: That he was well acquainted with the Biſhop, and yet never deſired his Leave to take it down; but applied to the Veſtry, for Power to do it; That he pretended to juſtify the Fact alſo, as he was a Juſtice of Peace; but the Matter appertained to the Eccleſiaſtical Juriſdiction: And it was ſtrange, if the Defendant being a Veſtry-man, had not Notice of the Biſhop's Inhibition: That, if it was done by the Agreement of the Veſtry, why was it done ſo privately, and none of the Veſtry with him? And laſtly, why was not the Order of Veſtry purſued, by taking down the Glaſs, and putting up other Glaſs in the Room of it? What Authority had the Defendant to break the Window, inſtead of repairing it, as the Veſtry ordered?

The Defendant's Counſel anſwer the Charge.

To this the Defendant's Counſel anſwered, that they acknowledged he did take down Part of the Glaſs; but ſaid, it did not appear he had any Notice of the Biſhop's Inhibition: That their Client was no Sectary, or factious Perſon, as was charged, but always conformable to the Rights and Ceremonies of the Church, and had been very active in his Station, to puniſh Separatiſts:

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tiſts: That he had not done this of his own Head, or out of a private Spirit, but that the Paſtor of the Church, and, the Veſtry, as well as himſelf, conceived the Picture to be idolatrous, and that it ought to be removed, and accordingly made an Order for removing it; and that it was not done in Oppoſition to the Church-Government, or Governors: And, beſides all the Canons and Conſtitutions for taking away ſuch ſuperſtitious and idolatrous Relicks, they ſhould prove, in Fact, that there had been much Idolatry committed with this Picture. They did not go about to entitle the Veſtry to any Juriſdiction; they knew they were ſubordinate to the Biſhop, and he might puniſh them, if they abuſed their Power: But though they have not legally a Juriſdiction, they do *de facto* meet, and do ſuch Things: And the Queſtion was, Whether it could be a Crime, when the Curate and Church-wardens aſſented to it, according to the Statute.

The Defendant's Proofs.

Then the Injunctions in the Reign of Queen *Elizabeth* were read, empowering Commiſſioners to take away things of this Nature; and the like in the firſt of King *James*.

The Depoſitions of the Defendant's Witneſſes alſo were read, who teſtified, that he was conformable to the Church, and received the Lord's Supper kneeling.

That the Veſtry-Men of the ſaid Pariſh had often ordered Seats in the Church to be taken down, and new ones made, and taken down Windows, Walls, and Pieces of the ſame Church; altered the Reading-Desk, and ſet up the Pulpit in a new Place; without any ſpecial Order from the Biſhop, or Ordinary.

That on the 16th of *January*, 1629. there was an Order of Veſtry, for taking down the ſaid Window, becauſe it darkened the Church; and for that it was ſuperſtitious; and that five of the Veſtry-Men were Juſtices of Peace in the ſaid City of *New Sarum*.

The Vicar of the Pariſh alſo depoſed, that the Defendant was conformable; and that the Damage done to the Window, was a Trifle: That there was in it a Picture of God the Father, creating the Heavens, Earth, Sun, Moon, and all Animals: But this Hiſtory of the Creation contained many Miſtakes, Falſities, and Abſurdities: That he had ſeen ſome People kneeling down, and adoring the old Man in it, which repreſented God the Father.

The King's Counſel reply.

Then Mr. Attorney obſerved, that there was a great deal of Difference between *Repairing* and *Reforming*: That Reformation ought always to be done by the Supreme Power, not by private Men. When private Perſons or Veſtries, took upon them Reformation, he would be bold to ſay, This was the ready Way to bring all into Confuſion. If this was ſuffered, what would they do next? Some held our Churches unclean and idolatrous, becauſe Common Prayers were ſaid in them, and Maſſes had heretofore been ſaid in them; and they would proceed ſhortly to take away the Churches themſelves. As to the kneeling down to the Windows, ſome would do the ſame to the Picture of a Saint, or a Prophet; and by the ſame Rule Mr. *Sherfield* might pull down the painted Windows of *Lincoln's-Inn* Chapel (where he was a Bencher): But, if he thought the Window an Occaſion of Idolatry, why did not he complain of it to the Ordinary, in all the twenty Years, he ſaid, it had been an Offence to him? If he thought it an Occaſion of Idolatry, others might think the contrary; and ſo a Tumult might have been raiſed about it, and an Inſurrection might have followed, which had many Times happened, on more trifling Grounds.

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As to the late Queen's Injunctions, *&c.* that had been read, they were to authorize the Ordinary, to enquire of things fit to be reformed in Churches by Church-wardens, and other Officers; and they were to preſent them to the Ordinary; and ſo they were to be reformed by the Power of the Ordinary, and not by the Church-wardens, or Veſtries: and though it was ordered, that all Relicks of Idolatry and Superſtition ſhould be taken away, yet every Memorial, or Story, of a Saint, or Prophet, was not a Relick of Idolatry, or Superſtition, and to be pulled down. They might as well take upon them, to pull down Cathedral Churches, becauſe they were built in Form of a Croſs; and other Churches, becauſe they ſtood Eaſt and Weſt, which was held ſuperſtitious by ſome. Reformation had always been a Work of publick Authority, and private Men had been puniſhed in this Court heretofore, for attempting it. In the late Queen's Time, many went about, breaking down Croſſes, Images, and Pictures of all Sorts, and were ſentenced for it; and others, in King *James*'s Reign, were fined an hundred Marks a-piece, for defacing Croſſes in the Highways, in the Night Time; and they are ſaid to be refractory *Browniſts* and Puritans in the Sentence; concluding that the Defendant had no Authority for what he did, and therefore left him to their Lordſhips Cenſure.

The Sentence of the Court.

Then the Lord *Cottington*, Chancellor of the *Exchequer*, proceeded to ſentence the Defendant. He ſaid, theſe were the Actions of *Browniſts*, and Puritans, as appeared upon Record: He conceived, his Anſwer was againſt him; and though he now quitted that Part of his Juſtification, it ſhewed what Spirit he was of. It had been ſaid, he was a wiſe Man, and an old Man, and learned in the Laws; but it had been a better Argument of Extenuation, if they had ſaid, he was a weak Man, or a mad Man: That great Miſchiefs might follow, if theſe things were ſuffered: That it was a great Offence and Preſumption in him, that knew the Law ſo well: If he had applied to the Ordinary, or to his Majeſty, to have the thing done, he had incurred no Blame, and might have received Thanks for it; but it was not in the Power of him, or the Veſtry to do it. This Attempt might have occaſioned a Tumult; it was done in Contempt of the Church, and the King's Supremacy; and therefore his Sentence was, *That he ſhould loſe his Place of Recorder; be bound to his good Behaviour; make a publick Acknowledgment of his Fault in the Church, and in the Cathedral; and pay a Fine of* 1000 l. *to the King.*

Sir *Robert Heath*, Lord Chief Juſtice of the *Common-Pleas*, (but Attorney-General when the Information was exhibited) ſaid, he did agree

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gree it was an Offence: He durſt not give Encouragement to any private Man, to do any publick thing in the Church, or Commonwealth, of his own Authority; but however, he was for mitigating the Sentence of Lord *Cottington*; for he ſaid, it did not appear, that the Defendant did this againſt the Biſhop's Authority, but without it. There was Cauſe, he was ſatisfied, for the removing the Window, there being a Picture of God the Father in it: But ſtill they ſhould have told the Biſhop of it; which ſince neither Mr. *Sherfield*, nor the Veſtry did, he was not to be excuſed in that: He ſhould therefore agree, to ſentence him for his Fault; but he was not for removing him from his Places of Recorder, or Juſtice of Peace; or bind him to his good Behaviour: But he would have him acknowledge his Fault before the Biſhop of *Sarum*; and for the Fine, he thought 1000 *l.* too much for an Error, as there appeared no Contempt; and therefore he ſet a Fine but of 500 Marks upon him.

The Lord Chief Juſtice *Richardſon* ſaid, that the Defendant was guilty of an Offence, in arrogating to himſelf a Power not belonging to him; and his Zeal, and good Intention, would not excuſe him: But as it was an involuntary Error, and not done in Contempt, and that he knew the Defendant to be a good Magiſtrate; to have given a great Check to Vice in the City of *Salisbury*; that he was conformable to the Church, and not diſaffected to the Government; *he ſhould not lay more than a Fine of* 500 l. *upon him*; *nor was he for taking away his Place of Recorder, or Juſtice of Peace*; *but would have him make a Submiſſion and Confeſſion of his Fault, before the Biſhop of* Salisbury. 1632 8 Car. I.

Mr. Secretary *Cook* was not for inflicting any other Puniſhment upon him, than his making a Confeſſion of his Fault, and Submiſſion to the Biſhop; and the reſt of the Court having delivered their Opinions, it appeared, that nine of the Lords were for ſetting a Fine of 1000 *l.* upon Mr. *Sherfield* the Defendant; that he ſhould be put out of his Place of Recorder; be bound to his good Behaviour, and make an open Acknowledgment of his Fault in the Church of St. *Edmonds*, where the Offence was done; and likewiſe in the Cathedral Church of *Sarum*, before the Biſhop there, and the Deans and Prebendaries of that Church: And nine others (the Lord Keeper being one) were of Opinion, that he ought not to loſe his Place of Recorder; but that he ſhould make an Acknowledgment in private to the Biſhop of *Sarum*, of the ſaid Offence, and in ſuch Manner, and before ſuch Perſons, as the ſaid Biſhop ſhould think fit: And as to the Fine, theſe were again divided; four (whereof the Lord Keeper was one) ſet no Fine; five gave their Voices for a Fine; four of them ſet 500 Marks, and one of them, *viz.* the Lord Chief Juſtice *Richardſon*, 500 *l.* which Fine of 500 *l.* was taken for the King; it having been a Rule of the Court of *Star-Chamber*, when there was a Difference of Fines, and an odd Number, the King was to have the middle Fine.

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The Trial of Prynne, *for Libelling the Government.*

The Trial of WILLIAM PRYNNE Eſq; for a *Libel*, entitled, *Hiſtrio-maſtix*; *or*, *a Scourge for Stage-Players*, &c. as alſo of MICHAEL SPARKS, for *Printing*, and WILLIAM BUCKNER, for *Licenſing the ſaid Libel*; and four others, *concerned in Printing Part of it*; before the Court of *Star-Chamber*, in *Hillary* Term, 1633-4. 9 *Car.* I.

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The Charge.

THE Information was brought in the Name of the Attorney-General *Noy*, and ſet forth, That the Defendant, *Prynne*, compiled, and put the ſaid Libel to the Preſs, condemning all Plays, Dancings, Maſques, Feſtivals, *&c.* And though he knew their Majeſties, and the Miniſters of State, were ſometimes preſent at ſuch Entertainments, yet the Defendant railed, and inveighed againſt them, and all that were preſent at them: That he condemned Hunting, and all other rural Sports; the keeping *Chriſtmas*, and other publick Feſtivals, and holy Days; and even the making Bonfires, the erecting May-Poles, and the dreſſing up Houſes with Ivy; endeavouring to move and incite the People to Rebellion, and to lay violent Hands on their Prince, for ſuffering ſuch things: That this Libel alſo contained many infamous Expreſſions againſt his Majeſty, and his Houſhold, and caſt ſeveral Aſperſions on the Queen, and uncharitable Cenſures on all Chriſtian People, recommending factious and diſcontented Perſons, ſuch as Dr. *Leighton*, and *Mariana* the Jeſuit, in order to withdraw the King's Subjects from their Allegiance: That he dealt with *Sparkes*, a common Publiſher of unlawful Books, to print this Libel; and with *Buckner*, another Defendant, to licenſe it; and with the other four Defendants, to print Part of the ſame, to the great Scandal of the Government, *&c.*

Prynne's Anſwer.

Prynne, in his Anſwer, confeſſed his compiling of the ſaid Book, which, he ſaid, was nothing elſe but a Collection of Arguments, againſt Stage-Plays; and he did not intend to reflect on the King and State; and that it was duly licenſed, and entered at *Stationers-Hall*, as the Law required: That he was ſo far from encouraging Schiſm, or Sedition, that he had with much Joy and Thankfulneſs acknowledged the Happineſs and Peace, he, and the reſt of his Majeſty's Subjects, enjoy'd under his Government: And if any thing in his Book ſhould, contrary to his Deſign, be conſtrued, to tend to Schiſm, or Sedition, he craved Pardon and Grace; and deſired the Court to take into their Conſideration, that he had already been a Year Priſoner in the *Tower*.

The

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The Charge, opened by the Attorney-General.

The Attorney-General obſerved, in opening the Charge, That the Defendant's Book was the Evidence againſt him, where he did not only rail at Plays and Dancing, and at his Majeſty, the Court, and all that were preſent at them, but againſt Hunting, rural Sports, Feſtivals, holy Days, Biſhops, Church-Muſick, and Church Ceremonies, promiſcuouſly; end even againſt the long Hair of Men and Women, and Perukes; and againſt Cards, Tables, and all manner of Diverſions; inſinuating we were returning into Paganiſm again; and adviſing People, to leave the Kingdom, and go and ſerve God in other Countries: That, tho' it might be lawful for thoſe that had a Miſſion, to write againſt the Abuſe of Plays in modeſt Terms, that would not excuſe Mr. *Prynne*, who could pretend to no ſuch Miſſion, and had raked together all the vileſt Terms, and *Billingsgate* Language to revile the Government, and all Mankind.

Paſſages in his Book produced as Evidence.

Then ſeveral obnoxious Paſſages were read out of the Book, as Evidence againſt him; and particularly that, where he reſembled his Majeſties Government to that of *Nero*'s, (viz) *The Multitude of our* London *Play-haunters are ſo augmented, that all the antient Devils Chapels, though five in Number, are not ſufficient to contain their Troops; whence we ſee a a ſixth now added to them: Whereas, in vicious* Nero's *Reign, there were but three ſtanding Theatres in Pagan* Rome, *though far more ſpacious than Chriſtian* London: In the ſame Libel, he calls Church-Muſick, *the Bleating of brute Beaſts*; and ſays, *the Choriſters bellow the Tenor, as if they were Oxen; bark a Counter-point, like a Kennel of Dogs; roar a Treble, as if they were Bulls; and grunt out a Baſe like a Parcel of Hogs.*

The Defence made by Prynne's Counſel.

The Defendant's Counſel ſaid in his Defence, That many of the Paſſages in his Book were relatively ſpoken, and moſt of them the Opinions of other Authors; and, that he had no Thoughts of comparing the preſent Times with thoſe of *Nero*'s; but they could not wholly excuſe him: They ſuppoſed he had ſo fixed his Eyes on the Abuſes of the Stage, that he had neglected to guide his Pen; and adviſed him to lay hold on the Rock of the King's Favour, and the Mercy of the Court: They begged, their Lordſhips would believe his Intentions were fair and honeſt, though his Expreſſions harſh; and hoped, that the Abuſe of of Plays would a little plead his Excuſe: That thoſe who had licenſed the Book, were rather guilty than he; and none but unlicenſed Books had yet been brought before that Court: That the Charge againſt him was made out by Inferences and Conſequences that were forced and ſtrained; and that the Paſſages quoted did not of Neceſſity carry that Meaning that had been put upon them; deſiring their Lordſhips would conſtrue his Intentions as he had explained them in his Anſwer upon Oath; and, as that had been admitted Evidence againſt him, as to his compiling the Book, ſo they would alſo admit it to be Evidence for him, to clear the Integrity of his Heart.

The Lords cenſure Prynne.

Three Days having been ſpent in Hearing this Cauſe, on the fourth the Lords proceed to give Judgment in it: And firſt, the Lord *Cottington*, Chancellor of the Exchequer, gave his Opinion. He ſaid, the Defendant ſtood charged with publiſhing a libellous Book, (or, rather a Volume of Libels, containing 1000 Pages) againſt his Majeſty and the State: That *Prynne* had here vented his Malice againſt the King, Prince, Peers, Prelates, Magiſtrates; againſt all Mankind, and againſt all Things; but moſt remarkably againſt the Church, and the Government thereof: But, that being no Part of the Information, he ſhould not cenſure him for his Reflections on the Church, but for his endeavouring to enflame the People againſt the King and Government.

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That his Expreſſions were to be taken according to their plain and genuine Senſe, and not according to the Interpretation he was now pleaſed to put upon them: That he did not ſpeak relatively, as his Counſel ſuggeſted, but poſitively, when he ſaid, *That our* Engliſh *Ladies, ſhorn and frizled Madams, had loſt their Modeſty: That Plays was the chief Delight of the Devil, and they that frequented them were damned*; *and, that Princes dancing in their own Perſons, was the Cauſe of their untimely Ends:* That though he pretended his Intention was only againſt publick and common Plays, the Tenor of his Book run againſt Plays in Princes Palaces: That his Book was levelled againſt the King and State: That he deſerved another kind of Trial; and the Defence he had made, did but aggravate his Offence; therefore his Sentence was, *That the Book be burnt by the Common Hangman: That he be put from the bar, and excluded from thec* Society *of* Lincoln's Inn; *and, that he be degraded by the Univerſity of* Oxford: *That he ſtand in the Pillory at* Weſtminſter *and in* Cheapſide, *and loſe an Ear at each Place; and ſtand with a Paper on his Head, declaring his Offence to be, the publiſhing an infamous Libel againſt both their Majeſties, and the Government: That he be fined five thouſand Pounds, and ſuffer perpetual Impriſonment.*

The Sentence againſt Prynne.

As to *Buckner*, who repreſented, that he was Chaplain to the late Archbiſhop of *Canterbury*, and licenſed but Part of the Book, and ſaid, he abhorred and deteſted the Cenſures againſt Eccleſiaſticks; the Court ſet a Fine of 50*l.* upon him: As to *Sparkes*, he pleaded, that the Book was licenſed before he printed it; but 64 Pages only appearing to be licenſed, he was fined five hundred Pounds: As to the reſt of the Defendants, the Attorney-General not having proceeded further againſt them, they were not cenſured.

Sentence againſt the other Defendants.

The reſt of the Lords were unanimous in the Cenſure and Sentence againſt *Prynne*; and the Lord Chief Juſtice *Richardſon* declared, That his Offence would have been adjudged High-Treaſon, if he had been indicted for it in the Courts of Common Law.

Remarks on Prynne's *Trial.*

This Man's Sentence has been the Subject of many a Lamentation. But ſhould a Writer at this Day, take upon him to denounce, That all who frequented Plays were damned, when he knew the King and Royal Family were ſometimes at theſe Entertainments; ſhould he reflect perſonally on the Queen, as this Writer did, and prefer *Nero*'s Govern-

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ment to the preſent Adminiſtration; ſhould he take upon him to new-model both Church and State, and endeavour to incite the People to Rebellion, in order to accompliſh the wild Schemes he had formed; whether, as the Lord Chief Juſtice *Richardſon* obſerved at this Hearing, ſuch a one might not be indicted and convicted of High-Treaſon, I very much queſtion: And, if ſo, ſurely this Gentleman was mercifully dealt with, when he loſt on y his Ears: And, indeed, it is reported of *Prynne* himſelf, when he ſaw what Confuſion ſuch ſeditious Libels had brought upon the Kingdom, *That the King had done well, if he had taken his Head when he cropt his Ears*, which might have put a Stop to thoſe Practices, and prevented the Subverſion of the Government.

1633. 9 Car. I.

1634. 10 Car. I.

Lord Balmerino's *Trial.*

The Trial of JOHN Lord BALMERINO, for a *Libel reflecting on his Majeſty and the Government* before *William* Earl of *Errol*, Great Conſtable of *Scotland*, Lord Juſtice-General, and his Aſſeſſors, at *Edinburgh*, 3 *Decemb.* 1634. 10 *Car.* I.

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The Charge.

THE Indictment recites, That, whereas by the Laws of *Scotland*, whoever defames his Majeſty, depraves his Laws, or miſconſtrues his Actions, incurrs the Pain of Death: And that, whoever ſhall hear ſuch ſcandalous Speeches, or Writings, and not reveal the ſame to ſome Magiſtrate, and apprehend the Author, if it be in his Power, ſhall incur the like Pain: And, whereas a ſcandalous and ſeditious Libel was found in the Cuſtody of *John Dunmure*, and diſperſed among the King's Subjects, reproaching his Majeſty's Government and Behaviour in Parliament; depraving divers Acts of Parliament, and miſconſtruing his Majeſty's Proceedings: Which ſaid ſcandalous and ſeditious, Libel, the ſaid *Dunmure*, had of the ſaid *John* Lord *Balmerino*, who was the Author, or Contriver, of it; or, at leaſt, was guilty of hearing and concealing thereof; or, of not diſcovering *William Haig*, whom he affirmed to be Author thereof: And was alſo guilty of divulging and diſperſing the ſaid Libel; and ſo far knew of the making the ſame, that he interlined it with his own Hand; cauſed his Servant *Robert Dagliſh*, to make a Copy of it, and delivered it to the Earl of *Rothes*, and to the ſaid *Joen Dunmure*, whereby it was diſperſed, to the Diſhonour of his Majeſty, *&c.* He, the ſaid Lord *Balmerino* had thereby incurred the Pain and Puniſhment of Death, which ought to be inflicted on him, to deter others from attempting the like.

The Libel mentioned in the Indictment.

The Libel mentioned in the Indictment was entitled, *The humble Supplication of a great Number of the Nobility and others, Commiſſioners in the late Parliament:* In which the *Scotiſh* Malecontents expreſs great Uneaſineſs at ſome Acts that had paſſed in the Parliament of *Scotland*, empowering his Majeſty, with the Conſent of the Clergy, to preſcribe what Apparel the Clergy ſhould wear in Time of Divine Service, and authorizing him, with a competent Number of the Clergy, to make Laws and Conſtitutions in Relation to Eccleſiaſtical Affairs; threatning his Majeſty, if he did make uſe of the Authority given him by thoſe Acts, and introduce any Thing new in Religious Matters, he would endanger loſing the Hearts of many of his Subjects.

They tell him alſo. That no juſt Prince ever cenſured his Subjects for giving their Voices; and, that the Notes his Majeſty, took in the Parliament Houſe, of the Names of thoſe who diſſented from thoſe Acts, and his refuſing to hear the Reaſons of thoſe that diſſented, made them very apprehenſive of Innovations in their Kirk.

They charge his Majeſty alſo, with ſquandering away the Supplies granted in Parliament, and the Revenues of the Crown, upon extravagant Courtiers: That he allowed the Printing of *Popiſh* and *Arminian* Books in *England*, and ſuppreſſed the Anſwers to them; and ſuffered *Arminianiſm* to be preached in *Scotland* with Impunity: They complain alſo, that Papiſts were permtted to ſit in Parliament; of Abuſes in the Coin; and of his ſlighting the Repreſentations of their Grievances. *The greateſt Part of which Libel is ſet forth in the Indictment.*

The Defence made by the Priſoner's Counſel.

The Counſel for the Priſoner repreſented in his Behalf, That it was not the Intent of the Legiſlature, to inflict Capital Puniſhments on the Authors of ſuch Reproaches as were laid in the Indictment: That thoſe Acts had never been put in Execution; or, if they had, they were long diſuſed, and therefore ought to be looked upon as abrogated.

And further, that the Writing mentioned in the Indictment, was an humble Petition and Supplication to his Majeſty, and not a Libel: That the Indictment was inſufficient; becauſe the Fact was not laid to be done with a ſeditious Intent: And he could not be charged with concealing the Libel; becauſe the Indictment itſelf ſets forth, that he delivered it to the Earl of *Rothes*, to deliver to his Majeſty: That it could not be ſaid, he was ihe Author of it, Mr. *William Haig* having under his Hand acknowledged himſelf the Author; and that the Priſoner's interlining it, could be no Argument of his contriving it.

That the hearing. and not revealing, ought not to be deemed Criminal, till the Writing was firſt declared infamous and ſeditious; and he ought not to be charged with the not apprehending the ſaid Mr. *Haig*; becauſe the apprehending intended by the

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Act, was only where the Party has been declared to be the Author.

The Reply of the King's Counſel.

To this the Lord Advocate replied, that what had been offered by the Priſoners Counſel, either related to the Sufficiency of the Indictment, which he left to the Court; or, to the Truth of the Facts, which he left to the Jury, (after he had made his Remarks on them.) And the Court, ſitting the 20th of *December*, delivered their Opinions, as to the Sufficiency of the Indictment.

The Opinion of the Court as to the Sufficiency of the Indictment.

1. As to the firſt Exception made by the the Priſoner's Counſel, they declared, that the Acts of Parliament, on which the Indictment was founded, were ſtill in force.

2. That the Indictment had well purſued the ſaid Acts of Parliament.

3. They held, there might be more Authors than one; and that the Words of the Act included the Adviſer, Deviſer, and Conſulter.

4. They adjudged the Writing to be a ſcandalous and reproachful Libel.

5. As to the divulging, they leave that, with the other Facts, to be tried by the Jury; and declare, if that only ſhall be found, it is to be puniſhed arbitrarily at the Diſcretion of the Court.

The Evidence given to the Jury.

A Jury being impanneled on the 20th of *March*, conſiſting of eight Peers, and ſeven Commoners, the Evidence againſt the Priſoner was produced; and firſt, the Libel found in the Hands of *Dunmure*, and another Copy of it, interlined by the Priſoner, were read, with *Dunmure*'s Depoſition, that the Lord *Balmerino* delivered the firſt Copy to the Deponent, and enjoined him to keep it private,

Three Examinations of the Priſoner were alſo read, wherein he confeſſes, that he had the ſaid Libel of *Haig*; that he communicated it to the Earl of *Rothes* and Mr. *Dunmure*; and that he had received ſeveral Letters from *Haig*, ſince he abſconded: The Depoſition of *Robert Dagliſh*, the Priſoner's Servant, alſo was read, wherein he depoſed, that he copied the ſaid Libel by his Maſter's Order, and at the ſame time took a Copy for himſelf.

The Earl of *Rothe*'s Depoſition was read, wherein he ſays, he received the Supplication, from the Lord *Balmerino*, to be communicated to his Majeſty; but that he always thought it ought to be ſuppreſed.

The Priſoner convicted.

The Jury being withdrawn, and returning into Court brought in their Verdict; whereby they acquitted the Priſoner of being the Author, or Adviſer of the Libel; as alſo, of the not apprehending the ſaid *William Haig* and they acquitted him of divulging and diſperſing the ſaid Libel: But found him GUILTY of the hearing the ſaid Libel; and and of concealing, and not diſcovering the ſaid *William Haig*, whom the Priſoner affirmed to be Author of it.

Whereupon the Lord Juſtice General, by the Advice of the Aſſeſſors, declared, That the ſaid *John* Lord *Balmerino* had incurred the Pain of Death by the ſaid Acts of Parliament; but the Execution of the Sentence was ſuſpended, till his Majeſty's Pleaſure was known.

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But pardoned.

It ſeems his Majeſty afterwards pardoned this Lord: But inſtead of acknowledging the Grace, he became one of his moſt implacable Enemies; and had a great Share in the *Scotiſh* Rebellion that happened ſoon after.

This Lord's Ingratitude.

The Faction threaten to murder the Judges and Jury.

Biſhop *Burnet* relates. That this Lord was ſo much the Darling of the Kirk, that the King durſt not puniſh him: That he was no ſooner condemned, but it was reſolved by the Faction, to break open the Priſon-doors, and ſet him at Liberty; or, if he ſhould be put to Death, to revenge it on the Court and Jurors who convicted him; and that ſome undertook to murder them; aud others, to burn their Houſes.

Remarks on Lord Balmerino's *Trial.*

In Compiling the *State Trials*, it was thought fit to intermix ſome *Scotiſh* Trials, which ſhew in what Inſtances their Proceedings differed from thoſe of *England*; and eſpecially ſuch as illuſtrated their Hiſtory and our own, as this Trial does, by exhibiting to our View ſome of thoſe Grievances, or pretended Grievances, for which the *Scots* fomented the Rebellion, that ended in the Subverſion of the Government of both Nations. And here we find, that a Nobleman is not tried by his Peers in *Scotland*, but in the Ordinary Courts, and by a Jury conſiſting of Peers and Commoners, who are always above thirteen (in this caſe fifteen) and their Verdict determined by a Majority of Voices. It is obſervable alſo, that the Court firſt determine whether the Facts in the Indictment amount to Treaſon, or Felony; and whether they are well laid; and afterwards a Jury is impanneled to try the Facts. Whereas in *England*, the Jury take both the Law and the Fact upon themſelves, and bring in a general Verdict, of GUILTY, or not GUILTY: Though, it is true, in *England* Exceptions may be taken to the Indictment before the Trial, and the Priſoner may move in Arreſt of Judgment after Conviction, where any thing appears illegal, or inſufficient, on the Face of the Indictment. It is obſervable alſo, that where a Perſon was capitally convicted in *Scotland*, it was uſual to execute him the ſame Day he is condemned, and not allow him Time to prepare for Death, as is practiſed in *England*: But then the Proceedings appear to be much longer depending in *Scotland* than in *England*; for this Trial of Lord *Balmerino*'s began the 3d of *December*, 1634. and the Jury did not bring in their Verdict, till the 20th of *March* following: And laſtly, it appears, that the Evidence conſiſted of Written Examinations and Depoſitions; and the Witneſſes were not produced perſonally in Court, to give their Teſtimony in the Preſence of the Priſoner, according to the Practice of the Courts of *England* in Capital Caſes.

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Proceedings againſt JOHN BASTWICK, M. D. HENRY BURTON, Clerk, and WILLIAM PRYNNE, Eſq; for *Seditious Libels*, in the Court of *Star-Chamber*, 14 *June*, 1637. 13 *Car.* I.

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The King againſt Baſtwick, &c.

A very imperfect Piece.

THIS could never have gained Admiſſion among the State Trials, if it had not been to ſhew the Sufferings of the Saints, for the Good Old Cauſe. The Editor does well to inform us, it was written by his (*or rather* their) *Friends; for there is very little that looks like a Trial in it. It conſiſts chiefly of the* Saying *and* Lamentations *of the Priſoners, at their Condemnation, and in the Pillory; and a Speech of Archbiſhop* Laud's, *after the Sentence.*

Minutes of the Information.

All that we can learn of the Information exhibited by the Attorney-General is, That it was preferred againſt the ſaid *Baſtwick*, *Burton*, and *Prynne*, for Writing and Publiſhing Seditious and Schiſmatical Books againſt the Government, in Church and State.

The Anſwers omitted.

Theſe Gentlemen, it ſeems, drew up their reſpective Anſwers to the ſeveral Informations preferred againſt them; but they were found to be ſuch flagrant Libels on the Government, that their Counſel durſt not ſign them: Whereupon Mr. *Prynne* preſſed, that he might ſign his Anſwer himſelf; but was ordered to put in an Anſwer that was leſs offenſive, than the Libels, for which he was proſecuted: And *Prynne*, and the other two, refuſing to put in any other Anſwers, than ſuch as were repleniſhed with Sedition and Calumny, the ſeveral Informations, or Charges were ordered to be taken *pro confeſſo*, and the following Sentence pronounced upon the Priſoners. Prynne *was condemned to be be ſet in the Pillory in* Palace-yard, *to loſe the Remainder of his Ears; to be branded with a hot Iron in each Cheek; to pay a Fine of* 5000 l. *and to be impriſoned in* Caernarvon *Caſtle.* Baſtwick *and* Burton *were ordered alſo to be ſet in the Pillory in* Palace-Yard; *to loſe their Ears; to pay a Fine of* 5000 l. *each, and to be impriſoned in the Caſtles of* Launceſton *and* Lancaſter,

They refuſe to put in any but ſcandalous Anſwers.

The Charge taken pro Confeſſo.

The Sentence paſſed on them.

Archbiſhop *Laud* would not be concerned in the Sentence, becauſe, he ſaid, it might look like Revenge in him, theſe Libels being levelled againſt his Grace perſonally, as well as againſt Epiſcopacy, and the Eccleſiaſtical Government.

The Purport of Archbiſhop Laud's *Speech.*

The Tendency of the Archbiſhop's Speech, after the Sentence, was to ſhew, That notwithſtanding the Priſoners, and other diſaffected People, clamoured againſt Innovations in Religion, they, and their Adherents, were the grand Innovators; endeavouring to ſubvert and deſtroy the Church of *England*, eſtabliſhed by Statute Law, and introduce the *Geneva* Plan in the Room of it; and that they were perpetually inciting the People to take up Arms, and break out into Rebellion againſt the Government, in order to compell his Majeſty to enter into their Meaſures.

The Priſoners ſuffer.

The Priſoners were ſet in the Pillory, their Ears cut off, &c. in Purſuance of the ſaid Sentence, on the 30th of *June*, 1637. *Prynne* was confined in *Caernarvon* Caſtle, in *Wales*; and *Baſtwick* and *Burton*, in the Caſtles of *Launceſton*, and *Lancaſter*: But on the 27th of *Auguſt* following, by an Order of Council, *Baſtwick* was removed to the Iſle of *Scilly*; *Burton* to the Iſle of *Guernſey*; and *Prynne*, to a Caſtle in the Iſle of *Jerſey*; with Orders, that none ſhould have Acceſs to them, without Leave of the Governors of the reſpective Places, where they ſhould be confined: And, that they ſhould not be allowed Pen, Ink, or Paper, or any Books, reflecting on the eſtabliſhed Church: That all Letters and Parcels, directed to them, ſhould be opened, and the Wives of *Baſtwick* and *Burton* ſhould not be permitted to reſide in the Iſlands where they were reſpectively confined: And the Priſoners remained in the ſaid reſpective Iſlands, to which they were ſeverally ſent, untill they were ſet at Liberty by the Parliament, that begun the Grand Rebellion, in the Year 1641. when they were brought back to *London* in Triumph, as will be related hereafter.

Sent to diſtant Caſtles. Removed to other Priſons.

Releaſed in 1641.

Prynne, the Reader obſerves in a former Trial, had his Ears cropped, for Writing a Libel, called, *Hiſtriomaſtix*, reflecting on the King, the Court, and indeed on all Mankind, that were not of the *Geneva* Stamp; for which he remained a Priſoner, and ſtill continued Libelling the Government, till he was brought before the Court of *Star-Chamber* again, for theſe repeated Acts of ſedition. Theſe laſt bleſſed Eſſays are levell'd chiefly againſt the Biſhops and the eſtabliſhed Church: He ſtiles the Archbiſhop, *Arch-Agent for the Devil*; calls the Biſhops, *Luciferian Lords, execrable Traitors, and devouring Wolves.* *Baſtwick* the Phyſician was proſecuted chiefly for writing againſt the High-Commiſſion Court; and *Burton* the Clergyman for making it the conſtant Drift of his Sermons and Converſation, to traduce the King and Government; but more particularly the Biſhops, and the Eccleſiaſtical State; And ſuch was the Matter contained in ſome of theſe Libels, that the Judges were of Opinion, that the Authors might have been convicted of High-Treaſon, if Indictments had been preferred againſt them in the *King's-Bench.* However, the Miniſtry were ſo mercyful, as to cauſe them only to be proſecuted for Miſdemeanors in the *Star-Chamber.* Notwithſtanding which Indulgence, they continued to aggravate their Crimes, by their inſolent Anſwers; which, whether they were fit for Counſel to ſign, may be gathered from the following Paſſages, *viz. That the Prelates were invaders of the King's Prerogative Royal; Contemners and Deſpiſers of the Holy-Scriptures; Advancers of Popery, Superſtition, Idolatry, and Prophaneneſs: That they abuſed the King's Authority*

Remarks on the Proceedings againſt Prynne, &c.

Part of the Priſoners Anſwers

1637. 13 Car. I.

thority, to the Oppreſſion of his Loyal Subjects; and therein expreſſed great Tyranny, Cruelty, and Injuſtice; And that in the Execution of this Performance, they ſhewed neither Wit, Honeſty, nor Temperance; nor were they the Servants of God, as they ought to be, but of the Devil; with a great deal more of the like Tenor.

Poſſibly there was not that Government in the World, except our own, but would have proceeded Capitally againſt ſuch Offenders, as they found ſtirring up the People to Sedition and Rebellion, eſpecially when they had the Impudence, in their Defence, to require the Deſtruction of the eſtabliſhed Church, and the Governors of it; without which, it evidently appeared, they were determined never to deſiſt from their traiterous Purpoſes: And in Fact, we ſee, they never left off their Railing and Calumnies againſt the Adminiſtration in Church and State, till they entirely deſtroyed both, and brought the Nation into a ſuch State of Confuſion and Miſery, both in Spirituals and Temporals, as no People ever before experienced. Would our good Friends the *Dutch* ever have ſuffered ſuch an attack upon their Calviniſtical Church, to have gone unpuniſhed, eſpecially if their State had been threatned, on a Refuſal to comply with ſuch Reformers? Would not our neighbours of *Scotland*, call a Conſpiracy to ſubvert their Presbyterian Kirk, an Invaſion on the Conſtitution, and proſecute thoſe who ſhould dare to revile and undermine their Presbyterian Eſtabliſhment, with far greater Rigour than theſe were proſecuted? Would ſuch Anſwers ever be ſuffered in a Court of Juſtice, as theſe Criminals would have put in, if they could have found Counſel hardy enough to have ſigned them? Or rather, would they not have been ſeverely puniſhed for this Impudent Defence, or rather Offence, in the Face of one of the higheſt Courts of Juſtice? With what Reaſon then can their Friends and Succeſſors clamour at the Puniſhment inflicted on theſe Incendaries, when it is evident to all the World, that inſtead of loſing their Ears, they ought to have loſt their Heads, as *Prynne* himſelf confeſſed, when he ſaw the Uſurpation eſtabliſhed.

The Character Lord *Clarendon* gives of theſe pious Confeſſors, for the Faith of *Calvin*, is, That they were three Perſons, "moſt notorious for their declared Malice "againſt the Government of the Church, "by Biſhops in their ſeveral Books and "Writings, which they publiſhed to cor-"rupt the People, with Circumſtances very "ſcandalous, and in Language very ſcur-"rilous and impudent, and which all Men "thought deſerved very exemplary Puniſh-"ment. They were, *continues that cele-"brated Hiſtorian*, of the three ſeveral Pro-"feſſions, which have the moſt Influence on "the People; a Divine, a Common Lawyer, "and a Doctor of Phyſick; none of them "of any Intereſt, or Eſteem, with the "worthy Part of their ſeveral Profeſſions, "having formerly been all looked upon, un-"der Characters of Reproach; yet, when "they were all ſentenced, and for the Exe-"cution of that Sentence brought out to be "puniſhed as common and ſignal Rogues, "expoſed upon Scaffolds, to have their Ears "cut off, and their Faces branded with hot "Irons (as the pooreſt and moſt mechanick "Malefactors uſed to be, when they were "not able to redeem themſelves by Fines, "for their Treſpaſſes; or to ſatisfy any "Damages, for the Scandals they had raiſed "againſt the good Name and Reputation of "others) Men began no more to conſider "their Manners, but the Men; and each "Profeſſion, with Anger and Indignati-"on enough, thought their Education, De-"grees, and Quality, would have ſecured them "from ſuch infamous Judgments, and "treaſured up Wrath for the Time to "come.

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But why ſhould theſe ſeveral Profeſſions think it a greater Diſgrace, that Criminals of their Degree, or Quality, ſhould be pillored, and ſtigmatized, than that they ſhould be hanged, drawn, and quartered, for Sedition and Treaſon, as theſe Criminals certainly deſerved to be, by *Prynne*'s own Confeſſion? Poſſibly the Speeches they were ſuffered to make, when their Ears were cut off in the Pillory, had an ill Effect upon ſome of the *Engliſh* Audience, who are obſerved to overflow with Pity, when they ſee the moſt notorious Villains ſuffer for their Crimes; not conſidering the Miſchief they have done, and would do, if they were ſuffered to go on with Impunity: They conſider barely the Smart and Ignominy the Criminal undergoes, and, forgetting their Offences, look upon them as innocent Men; This, it muſt be confeſſed, is frequently the Caſe of the unthinking Mob: But one would not have expected ſuch a Conduct from Men of any Education, or Reflection: That theſe ſhould treaſure up Wrath and Revenge againſt their Governors for inflicting infamous Puniſhments upon the moſt infamous Villains, is a little unaccountable, eſpecially when all Men (as the ſame noble Author obſerves) were agreed, they deſerved *a very exemplary Puniſhment*, and that they ought to have paid for their notorious, obſtinate, and repeated Offences, with the Loſs of their Lives, if they had been puniſhed according to their Demerits. Indeed the Parliament that begun the Rebellion in 1641. thought theſe Sufferers merited ſo much from them, by contributing to ſpirit up the People againſt their Sovereign, and the eſtabliſhed Religion, that after they had cauſed them to be brought quite through *England*, from their reſpective Priſons, in a triumphant Manner, that Aſſembly gave each of them a Reward of 4000 *l.* and upwards; and *Prynne* was afterwards, upon a Vacancy, elected a Member of that Parliament, and ſat in the Houſe during great Part of the Uſurpation: But he appears at length to have been as much out of Favour with the Uſurpers, as ever he was with his lawful Prince: He lived to ſee, and be convinced of the Miſchiefs he had brought upon his country; and being elected a Member of Parliament, in the Year 1660. was as forward in reſtoring King *Charles*. II. as he was in depoſing his Father King *Charles* I.

The Parliament of 1641. reward them with 4000 l. a piece.

Prynne convinced of his Error. And contributes to the Reſtoration.

1637. 13 Car. I. The Trial between his Majeſty King CHARLES I. and JOHN HAMPDEN Eſq; *upon the Aſſeſſing Ship-Money on the Defendant*, 1637. 13 & 14 *Car.* I. 1637 13 Car. I.

The King againſt Hampden.

HIS Majeſty King *Charles* I. in the Beginning of *February*, 1636-7. cauſed the following Caſe to be propoſed to the Judges, *viz.*

CAROLUS *Rex.*

The Caſe of Ship-money propoſed to the Judges.

" When the Good and Safety of the " Kingdom in general is concerned, and " the whole Kingdom is in Danger; Whe- " ther may not the King, by Writ under " the Great Seal, command all his Subjects, " at their Charge, to provide and furniſh " ſuch Number of Ships, with Men, Vic- " tuals, and Munition, and for ſuch Time " as he ſhall think fit, for the Defence and " Safeguard of the Kingdom, from ſuch " Danger and Peril; and by Law compel " the doing thereof, in caſe of Refuſal and " Refractorineſs? And whether, in ſuch a " Caſe, is not the King ſole Judge, both of " the Danger, and when, and how, it is to " be prevented and avoided?"

The Judges Opinion of it.

To which the Judges anſwered, " We " are all of Opinion, that when the Good " and Safety of the Kingdom in General " is concerned, and the whole Kingdom " in Danger, your Majeſty may, by Writ " under the Great Seal, command all your " Subjects, at their Charge, to provide and " furniſh ſuch Number of Ships, with " Men, Munition, and Victuals, and for " ſuch Time, as your Majeſty ſhall think " fit, for the Defence of the Kingdom, " and may by Law compel the doing there- " of, in caſe of Refuſal; and that your " Majeſty is the ſole Judge, both of the " Danger, and when, and how, the ſame is " to be prevented and avoided."

The Names of the 12 that ſigned the Opinion.

Signed by all the twelve Judges, *viz. Jo. Brampſton, Jo. Finch, Humphry Davenport, Jo. Denham, Rich. Hutton, W. Jones, Geo. Croke, Tho. Trevor, Geo. Vernon, Fra. Crawley, Rob. Berkley*, and *Fra. Weſton*

This Reſolution his Majeſty cauſed to be publiſhed, and entered in the Courts at *Weſtminſter*, and directed the Judges to communicate it to the People, in their reſpective Circuits.

The Tenor of the Writ to the Sheriff of Bucks, *to aſſeſs the County towards a Ship.*

The Occaſion of demanding the Opinions of the Judges was this: A Writ had been iſſued in the eleventh Year of King *Charles* I. directed to the Sheriff of *Bucks*, the Bailiff and Burgeſſes of *Buckingham*, *&c.* reciting, that his Majeſty being given to underſtand, that the Sea was infeſted by Thieves, Pirates, and Sea-Robbers, as well *Turks* Enemies to Chriſtianity, as others, who took and plundered the Ships of his Majeſty's Subjects, and thoſe of his Allies, who uſed to be protected heretofore by the *Engliſh* Nation: That his Majeſty conſidering alſo the Danger that in theſe Times of War hung over us; and deſiring to provide for the Defence of the Kingdom, the maintaining the Dominion and Protection of the Sea, and the Security of his Subjects; he does therefore command the Sheriff, *&c.* upon their Faith and Allegiance, that they provide in this County, a Ship of War, of 450 Tons, with 180 Men, Guns, Gunpowder, double Tackling, and all other things neceſſary, and to bring the ſaid Ship to *Portſmouth* by the 1ſt of *March* next, provided with Victuals, Mariners, Wages, and all other Neceſſaries, for twenty ſix Weeks, in order to proceed with his Majeſty's other Ships of War, and thoſe of his other Subjects, for the Defence of the Sea, and themſelves: And the ſaid Sheriff, *&c*, are further commanded, within thirty Days after the Receipt of this Writ, to aſſeſs every Perſon equally within the ſaid County (who had no Share in the ſaid Ship, and did not ſerve therein), towards the Charges of providing the ſaid Ship, *&c.* according to their Eſtates and Employments; and the Portions ſo aſſeſſed, to levy by Diſtreſs, or other lawful Ways: And if any Perſon ſhould be found rebellious, or refractory, in the Premiſes, to impriſon him till further Orders.

The Tenor of the Scire facias, *for* Hampden *to ſhew Cauſe, why he did not pay the Money aſſeſſed.*

Some of the Inhabitants of the County of *Bucks* refuſing to pay the Money required of them, for fitting out a Ship, a *Scire Facias* was iſſued to the Sheriff of *Bucks*, reciting that whereas ſeveral Sums of Money, in a Schedule thereto annexed, had, by virtue of the above-ſaid Writ of 4 *Aug.* 11 *Car.* been aſſeſſed upon divers Perſons in that County, for providing a Ship of War, which were not yet paid: And that upon a *Certiorari*, dated 9 *March*, 13 *Car.* the ſaid Sums, and the ſeveral Perſons on whom they were aſſeſſed, were certified into *Chancery:* and from thence, by *Mittimus*, dated 5 *May*, were ſent into the *Exchequer*, that Proceſs might iſſue againſt the Defaulters. The Sheriff was thereupon commanded, *quod ſcire faceret* the ſeveral Defaulters, that they ſhould appear in the *Exchequer*, *in Octob. Trin.* 13. *Car.* and ſhew cauſe, why they ſhould not pay the reſpective Sums aſſeſſed on them: And the Sheriff returned *quod ſcire fecit*, *John Hampden* Eſq; who was aſſeſſed twenty Shillings, and had not paid it: Whereupon Mr. *Hampden* appeared, and demanded *Oyer* of the *ſcire facias*; of the Schedule of the Writ dated 4 *Aug.* 11. *Car.* the *Certiorari* and *Mittimus*; and of their ſeveral Returns; and demurred to them: And Mr. Attorney joining in Demurrer, the Cauſe was adjourned into the *Exchequer-Chamber*, to be heard before all the Judges of *England*.

Hampden appears, and demurs to the Writ, &c.

The Cauſe heard before all the Judges.

All

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Mr. St. John's *Defence of Mr.* Hampden.

All the Judges being aſſembled in the *Exchequer-Chamber*, in *Hillary* Term, 1637-8. Mr. *St. John*, Counſel for Mr. *Hampden*, entered upon his Defence, and ſaid, he admitted that the King was by Law entruſted with the Care and Defence of the Realm; that the Militia was entirely in his Hands; that no Man might ſend out a Ship of War, or erect a Bulwark upon his own Land, againſt an Enemy, without the King's Commiſſion; nor might the Subject, without a ſpecial Commiſſion, arm, or draw Troops together, or make any general Collection of Money of the Subjects, though with their Conſent: The *ſuprema poteſtas* was inherent in his Majeſty, as Part of his Crown and kingly Dignity: His Majeſty alſo was the ſole Judge of Dangers from abroad; and when, and how, the ſame ought to be prevented. He admitted further, that the Law had given the King a Power, by Writ, to command the Inhabitants of each County to provide Shipping, for the Defence of the Kingdom, and might compel the doing thereof; ſo that the Queſtion was not, in whom the ſupreme Power of giving the Authority to the Sheriff, which was mentioned in the Writ, did lie (for that was in the King), but the Queſtion was, *By what means* this ſupreme Power was to be communicated and applied, the Law of *England* having known Rules, which were neceſſary to be obſerved in ſuch Caſes?

As the King could not apply his Laws, in many Caſes, without the Aſſiſtance of his Judges; ſo, in other Caſes, he could not communicate, either his Power, or Juſtice, to his Subjects, without the Aſſiſtance of his Parliament: That it did not appear, that this Writ, which gave Power, to ſell and alter the Property of the Defendant's Goods, iſſued from his Majeſty, ſitting in Parliament: And the Queſtion then would be, If it was not erroneouſly iſſued?

There were ſeveral known and undoubted Ways and Means, whereby the Law had provided for the Defence of the Realm, both by Land and Sea, without this Way in the Writ; as firſt, by the *Tenure* of Lands. The Kings had anciently all the Lands in their own Hands: Their Books agreed, that all the Lands in the Kingdom were held, mediately or immediately, of the Crown: And as the Law had intruſted the King with the Defence of the Kingdom, ſo had it intruſted him with the Reſervation of ſuch Tenures, as might ſerve for that Purpoſe.

Every Man, who held by Knight's Service, was to find a Man completely armed: He who held by a whole Knight's Fee, forty Days: He who held by half a Knight's Fee, twenty Days; and ſo in Proportion: And it appeared by the *Red Book*, that there were thirty thouſand Knights Fees held of the Crown, at the Conqueſt: And ſince the Tenants by Knight's Service, were obliged to ſerve but forty Days, other Tenures were reſerved; ſuch as Grand-Serjeanty, Tenures by Cornage, and Caſtle-guard; and, according to *Littleton*, there were eleven thouſand of theſe Tenures, for the Defence of Caſtles and Fortreſſes, within the Realm; moſt Part of which were upon the Sea-Coaſts, or upon the Frontiers of *Scotland* and *Wales*, the Places of greateſt Danger. Beſides which, there were Tenures by Petty-Serjeanty, which were intended for the finding of all ſorts of Armour and Munition for the War.

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The Cinque-Ports, and other Frontier Places were allowed ſeveral Privileges; ſuch as, having all Juriſdiction within themſelves, &c. not only to invite People to ſettle in them, but, that the Inhabitants might never be obliged to remove from their Dwellings, and leave ſuch Towns expoſed to the Enemy: That the King was actually poſſeſſed of theſe Military Services, as he received the Profits of Wards, Marriages, Reliefs, &c. (the Fruits of them); and theſe Profits were to be laid out in the Defence of the Realm, as appeared by many Authorities.

That there were other Tenures reſerved for Sea Service: In the Regiſter, *fol.* 2. one Town is ſaid to hold by the Tenure of furniſhing five Ships annually: In the Iter Roll of *Eſſex*, 13 *Edw.* I. *Rot.* 7. it is preſented, that the Town of *Maldon* held by the Service of finding one Ship; and from the Time of their Rendezvous, they were to remain in the Service forty Days at their own Expences. Many other Towns held by this Tenure of finding Ships and uſually, when the Tenants were ſummoned to the Land Service, theſe were ſummoned to perform their Services at Sea; and the Summons to each run in the ſame Words, *(viz.) cum toto ſervitio veſtro quod nobis debetis:* And in the 13th of *Edw.* III. *Pars* 1. *M.* 11. the King declares, That the Cinque Ports, and other great Towns and Havens, are franchiſed *pur eſtre mure inter nous & Aliens*, that they may be a Wall between us and Foreigners.

There were other Tenures created, whereby Rents were reſerved out of Lands for Servants Wages: All Men had not anciently an equal Right to Liberty and Property: The Villain's Perſon was not free; his Lord might impriſon him, and tax both his Lands and Goods *de haut & de baſs*. Tenants in Ancient Demeſne and Burghers, had an abſolute Freedom in their Perſons; but were liable to be taxed for the Defence, and other neceſſary Affairs of the Realm, without Conſent of Parliament. Such Tenants in Ancient Demeſne, were to plow and manure the King's Lands; and, according to an ancient Manuſcript, the Corn, and other Proviſions ariſing thereby, were deſigned to ſtore the King's Garriſons: and ſuch Tenants were taxable at the King's Pleaſure, as Villains were, but only for the Defence of the Realm, and other Neceſſities of State: And there were ſtill a third ſort of Tenants, called Freeholders, who held by a certain Rent, and had an abſolute Freedom in their Perſons and Eſtates, and could only be taxed in Parliament.

Beſides theſe Tenures, the Law has conferred divers Prerogatives on the King, which were intended to be employed for the Defence of the Kingdom, and other publick Occaſions; ſuch as the Property of all Treaſure-Trove, and Gold and Silver Mines: In the Parliament Roll of 6 *Rich.* II. M. 42 the Commons petition

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tion, that the King will live on his Revenues; and that the Wards, Marriages, Reliefs, Eſcheats, Forfeitures, and other Profits of the Crown, may be ſpent in the Wars for the Defence of the Kingdom.

That Aids and Subſidies, and likewiſe Tonnage and Poundage, before they were granted the Crown for Life, were intended not only for the Protection of Merchants, and the ordinary Defence of the Sea, but for the Defence thereof in Times of extraordinary Danger, from the Incurſions of Enemies, *&c.* as appeared by the ſeveral Grants of them in the Parliament Rolls; and when they were granted for Life, it appears by 12 *Edw.* IV. 13. they were granted, that the King might always have Treaſure in Readineſs to oppoſe an Invaſion: That his Majeſty was in the actual Poſſeſſion of theſe, and had by his Proclamation declared, that they were granted to his Anceſtors for the Defence of the Seas, and the Safety of the Realm; and, that he received them for that Purpoſe.

That by the Statute of *Wincheſter*, 13. *Edw.* I. Every Man according to the Value of his Lands and Goods, is to find Horſe and Armour for the Defence of the Realm; and by 5 *Hen.* 4. every Man is to find Armour againſt Invaſions.

He inſiſted, that the Service of the Cinque Ports, Tonnage and Poundage, and the other Duties above-mentioned, were the ordinary legal Ways appointed for the Defence of the Sea. The way by the Writ; by aſſeſſing and altering the Property of the Subjects Goods, without their Conſent, as it was an unuſual and extraordinary Way, ſo he ſhould ſhew it was not legal. If the Service of the Ports had been firſt required, and the Money, ariſing by the Ways aforeſaid, had been laid out in the Defence of the Kingdom, and theſe had not been ſufficient; if it ſhould be admitted, in that Caſe, that the Writ was legal, yet, in this Caſe, it could not be ſo; becauſe it was a Maxim in Law, that we ought not to have recourſe to extraordinary Means, when the ordinary Means were ſufficient: As no Man could ſue in Chancery, when he might have Remedy at Common Law; nor, ought any Man to be tried by a Court-Martial, while the Civil Courts were open. But he held, That the Property of the Subjects Goods could not be affected, or altered, without an Act of Parliament, though it were for the Defence of the Realm; which, he ſaid, was evident from the Aids and Subſidies which had been granted by Parliament; and from the ancient Summons to Parliament: For when Aids were demanded, the particular Cauſe of Defence, and againſt what Enemy, were ſpecified: His Majeſty could not, without a Parliament, tax his Subjects, even for the levying Land-Forces for the Defence of the Kingdom; for maintaining his Forts and Caſtles; for warlike Stores, or Proviſions; for the Maintenance of Priſoners, or Hoſtages; or for preſerving the publick Peace; and if he could not tax them for theſe Services, it was evident he could not tax them for any.

He admitted, that after the Statute of *Wincheſter*, every Man, according to his Eſtate and Abilities, was to find all manner of Arms, as well for the Defence of the Realm againſt Foreigners, as for the Preſervation of the Peace: And that upon a ſudden Invaſion, or Rebellion, they were compellable to march out of their reſpective Counties to oppoſe either, where the King went in Perſon; as appeared by 11 *Hen.* IV. *cap.* 1 & 18. And he admitted, that as long as they remained at home in their ſeveral Counties, they were to have no Wages: But he denied, that the Subject was taxable for Wages, or Proviſions, or otherwiſe, for finding of Soldiers out of their reſpective Counties, for Defence of the Kingdom; or that they were compellable to do it at their own Charge.

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He acknowledged, indeed, that before the Reign of *Edw.* III. Commiſſions had iſſued for that Purpoſe: To balance which it was evident, that Armies of 30000 Men, beſides thoſe who were obliged to ſerve by their Tenures, had been maintained at the King's Charge, from the Time they marched out of their reſpective Counties. And, upon a Rebellion in the Reign of *Henry* VIII. againſt which the King intended to have gone in Perſon, Privy-Seals were ſent to moſt of the Gentry, to attend the King with their beſt Retinues; and they ſhould bring the Bills of their Expences with them, which were promiſed to be repaid: And it appeared, that thoſe who loſt their Horſes in Battel with the Enemy in the Reigns of *Edw.* I. and *Edw.* II. were entitled to Damages for the Loſs of their Horſes: that the King alſo bore the Charge of ſuch Frontier Caſtles and Towns as were beſieged, appeared by the Allowances made in the *Exchequer*, *Trin.* 27. *Edward* I. *Rot.* 47. *pro tuitione* NEW-CASTLE *contra* Scotos, *qui hoſtiliter Regnum in partibus illis invaſerunt:* And the Charge of maintaining Priſoners taken in defenſive Wars were frequently allowed in the *Exchequer*, 4 *Edw.* II. *Rot.* 22. *dorſ.*

Then he proceeded to ſhew, that Money borrowed by the King, for the Defence of the Realm, had not only been repaid upon Petition, but recovered by Suit in the ordinary Courts of Juſtice. *Comm' Paſc.* 31. *Rot.* 41. the King borrowed of *Henry Thomſon* 149 l. *pro defenſione Regni*; which was ſued for, and Re-payment ordered: And *Paſch.* 29 *Edw.* I. *Rot.* 18. The King *pro urgentiſſimis Regni negotiis & defenſione totius Regni*, having ſeized the Money of all the Abbies, Cathedrals, and Religious Houſes, and promiſed to return it: Upon Petition for it, at the Parliament held at *Lincoln*, he promiſed the Re-payment of it again, *Ita quod Regis conſcientia ſuper hoc exoneretur.* But, if the King had apprehended when he wanted Money for the Defence of the Realm, he might have taxed his Subjects for it, he would never have anſwered, that he would repay it, *ad exonerandum conſcientiam*; for then, in Equity and Conſcience, the Parliament ought to have ſatisfied ſuch Debts.

That the Subject was not liable to ſuch Charges for the Defence of the Kingdom, he obſerved alſo, was evident from ſeveral Acts of Parliament as 4 *Will.* I. where the King grants

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grants that all Freemen ſhould hold their Lands and Poſſeſſions free from all unjuſt Exactions and Tallages, *Niſi ſervitium ſuum liberum quod de jure nobis facere tenentur.* And the Grant or Statute, obtained of King *John* at *Runningmead*, That no Aid ſhould be levied but by the Common (or Grand) Council of the Kingdom. 25 *Edw.* I *cap.* 5. & 6. That no Aids ſhould be taken, but by Conſent in Parliament; and by the Statute *De Tallagio*, that no Tallage, or Aid, ſhall be taken without Conſent: And it happened that the Grievances which procured the laſt Statute, where Exactions made by the King for the Defence of the Realm.

The Statute 14 *Edw.* III. *c.* 1. declares, That the People ſhall not be compelled to make any Aid, or ſuſtain any Charge, but in Parliament. He cited alſo 25 *Edward* III. and 1 *Rich.* III. againſt the taking of Loans and Benevolences. And in the 3d Year of the preſent King, a Commiſſion iſſuing, for Aiding his Majeſty's Allies beyond Sea, or for the Defence and Safety of the Kingdom; that Commiſſion was condemned by both Houſes of Parliament, and cancelled in his Majeſty's Preſence.

He did admit, that the Danger might ſometimes be ſo preſſing, that the Subjects Goods might be taken away without their Conſent: There might be ſuch Times when Property ceaſed, and, all Things reſolved again into the common Principles of Nature; as in Caſes of Fire, and ſudden Invaſions: Any Man may juſtify pulling down Houſes, in the firſt Caſe, or erecting Bulwarks upon other Men's Lands, in the other: In ſuch Times, not only his Majeſty, but every one, was empowered to take the Goods of another, pull down their Houſes, or burn their Corn, to cut off Proviſions from the Enemy, and do ſuch other Things as might conduce to the Safety of the Kingdom, without any Reſpect to Property, 12 *Hen.* VIII. 2 *Br. tranſ.* 406. 8. *Edw.* IV. 23. And when the King proclaimed War, the Law took Notice of it; the Subjects of the Nation againſt whom War was proclaimed, immediately left their Properties here, and could maintain no Action for them; and any of the King's Subjects might ſeiſe the Goods of ſuch a Foreigner: But here it did not appear by the Writ, that War was proclaimed againſt any Nation: So that the Point was, Whether the King, in Time of Peace, without Conſent of Parliament, could alter the Property of the Subjects, upon a Suggeſtion, that Money was wanting for the Defence of the Kingdom; eſpecially, when it appeared by the Writ, that the Time allowed for bringing in the Supply was ſeven Months; and conſequently the Neceſſity, in reſpect of Time, was not ſuch, but that a Parliament might have been called, time enough to have raiſed a Supply.

The Argument of the Solicitor-General, for the King.

Sir *Edward Littleton*, the Sollicitor-General, argued on the other Side in the Behalf of the King, and obſerved, That the Writ directed to the Sheriff of *Bucks*, 4 *Aug.* 11 *Car.* I. for providing a Ship for the Defence of the Kingdom, was the Ground of the Aſſeſſment; and the Reaſon ſet forth was, *Quia ſalus Reg-*

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ni periclitabatur, which was not only confeſſed by the Demurrer, but teſtified by the King under the Great Seal: The ſole Queſtion therefore was, Whether the King, finding the Safety of the Kingdom neceſſarily required the Aid commanded in the Writ, might not require that Aid for the Preſervation of the Kingdom and People?

It was agreed, that the Kingdom was to be defended, and that the King was entruſted with that Defence; but it was denied, that he might do it out of Parliament: He was ſorry, there could be no Salvation for the People but in Parliament: Mr. *St. John* had admitted the King might do this, if there was an actual War, or a War proclaimed; and, why then might it not be done, when the Safety of the Kingdom was in Danger? The fundamental Rule, cited by himſelf, was, that the *Safety of the People was the Supreme Law*; and it would be ſtrange, if the King could by his Writ grant them a Remedy for the Recovery of their private Eſtates, and ſhould not have Power to iſſue a Writ for the Defence of the Kingdom, when it was in imminent Danger.

The Common Safety was to be preferred to our private Eſtate: Upon an Invaſion, it was lawful to erect Bulwarks on any Man's Land, for the Defence of the Kingdom; and ſhould not a King have Power to put our Outworks at Sea, our Naval Walls, in a Condition to oppoſe the Enemies Landing at our Doors: By the King's Command, the Suburbs of any Town might be burnt, or razed: And in 1588. great Armies of 100,000 Men, and upwards, were raiſed by the Queen's ſole Authority, and maintained at the Subjects Charge; and Orders were given, if they could not prevent the Enemies Landing, to burn the Towns, and deſtroy the Corn, and all manner of Proviſion that might afford them Suſtenance. Where was Property in that Caſe? There was no poſſibility of ſaving private Fortunes, if they ſuffered the Kingdom to be loſt.

The King had many Prerogatives that effected the Subjects Property; as digging in any Man's Houſe, or Lands, for Salt-Petre, and Royal Mines; and many things were made lawful by Neceſſity, which otherwiſe were not: It is abſurd to talk of obſerving Rules and Forms, when the Kingdom was in Danger of being loſt; when the keeping the Laws would be the Ruin of the Commonwealth. The King might lay a Charge upon the Subject for building the Walls of a Town, becauſe they have the Benefit of it in Time of Danger; and was not the whole Kingdom preſerved by keeping a Navy at Sea? It was agreeable to Law, that where the People received the Benefit, they ſhould contribute to the Charge: And in leſſer Matters, ſuch as Pontage and Paveage, the King might impoſe, or charge and diſtrain the *ter' tenants*, to make Contribution proportionable to their Eſtates and Abilities.

If there were but Rumours of Wars, the Laws were ſilent; much more, when the King foreſees the Danger, and declares it. In Queen *Elizabeth*'s Reign, greater Things

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were done upon leſs Occaſions: Ships were taken up, the Ports ſhut, and Men raiſed on the leaſt Apprehenſion of Danger. It would be ſtupid, to make no Preparations againſt an Enemy, till he was actually on our Coaſt; it might then be too late to prevent his landing.

The making War and Peace was a Royal Prerogative, the People had nothing to do with, nor were all Dangers fit to be communicated to them: The King beſt knew the Exigency of Affairs. It might not be prudent to have the Kingdom without a Navy, when ſuch great military Preparations were making in the neighbouring Kingdoms. Dangers ought to be prevented, as well as removed.

Before the Conqueſt, King *Ethelred* commanded, that every 310 Hides of Land ſhould find a Ship. *Danegelt* was paid annually before the Conqueſt, for the Maintenance of a Fleet, as well in Peace as War; but afterwards, only in Time of War: *Danegelt* is ſaid to be releaſed by the Confeſſor; becauſe he dreamed he ſaw the Devil dancing upon the *Danegelt*; but it appears by the *Black-Book* to have been reſumed, and paid in the Conqueror's Time; and it was paid alſo in the Reign of *Hen.* II. as appears by the Pipe-Roll; and though the Name was altered, the Thing continued. In King *John*'s Time they gave a fourth Part of their Revenues, for the Defence of the Land. In the 48th of *Edw.* III. ſome Captains not being able to maintain themſelves, the King commanded they ſhould be paid *De Com. Comitat.* 48 Edw. III. M. 2. *de pecunia levand' circa tuitionem maris.*

In the Reign of *Hen.* III. the Citizens of *London* and Men of *Greenwich*, were commanded to guard the Mouth of the *Thames*. *Clauſ.* 48 *Hen.* III. *M.* 11. *dorſ.* And when any refuſed to attend the Defence, the King commanded to ſeize their Lands, take the Profits, and anſwer them into the *Exchequer*: The finding of Arms did not begin upon the Statute of *Wincheſter*; that Statute only appointed in what manner the Country ſhould be rated: The County of *Berks*, though an inland County, was aſſeſſed towards the Defence of the Sea, and upon a Refuſal, a *Capias in manus* was awarded to anſwer it in the *Exchequer*, 24 *Edw.* I. And having cited a great many Authorities, eſpecially in the Reign of *Edw.* III. he obſerved, that it was evident from thoſe Records, that both Sea and Land had been guarded by the Commons, when the King apprehended any Danger; and if the Danger was great, no Age, or Sex, or Order, were exempted; the Refuſers being compelled by Impriſonment, or the Seizure of their Lands or Goods, to perform it: And the Writs ſignificantly expreſſed, that no Wages in theſe Caſes ought to be paid by the King: Then he cited ſeveral Commiſſions for Defence, in the Time of the Civil Wars between the Houſes of *York* and *Lancaſter*; and particularly a Commiſſion of Array, iſſued by King *Edw.* IV. to raiſe a Power againſt his great Adverſary and Rebel, *Hen.* VI. who lately enjoyed the Crown by Uſurpation; and ſhewed, that by the Statute of 1 *Hen.* VII. *cap.* 16 every Subject was bound by his Allegiance, to aſſiſt when Need required. Statute 35 *Hen.* VIII. *cap.* 13. recited, That the Subject was bound to aſſiſt the King, with Body, Lands, and Goods, in his Wars; and in 4 & 5 *Phil. & Mar.* Commiſſions of Array were iſſued to all Gentlemen. In 3 & 4 *Phil. & Mar. Calais* being beſieged, the Warden of the Cinque-Ports was commanded to make Proclamation in *Kent*, that all, from ſixteen to ſixty, ſhould repair to *Dover*, to ſave *Calais*, on Pain of Death. In the Reign of Queen *Elizabeth* a Commiſſion iſſued, to muſter all Men againſt *Scotland*; and with theſe Commiſſions went Inſtructions, that the Service was neceſſary, becauſe all our Neighbours were in Arms.

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When the *Spaniſh Armada* threatned the Kingdom, in the Year 1588. the whole Kingdom was in Arms, at the Subjects Charge, by Orders from the Council-Table; and the City of *London* being required to find ten Ships, furniſhed out 20: Such was the Subjects Affection for their Prince and Country in thoſe Days; they did not diſpute, but obey; Letters were in like Manner ſent to other Towns, to provide Shipping; and *Colcheſter* refuſing to contribute, was compelled to it: Nor did the Queen wait till the Year 88. while the Tops of the *Spaniſh* Ships might be ſeen from the Coaſt, but ſhe made theſe Preparations in the Year 1587. when there was only a Rumour, that the *Spaniards* intended to invade the Kingdom: Great Forces being aſſembled in *London*, in the Year 1599, for the Defence of the Queen againſt the Earl of *Eſſex*, the Charge was borne by the People, and even the Inns of Court contributed towards it; and where the Gentlemen did not aſſiſt in Perſon, ſhe had their Purſes. In the 2d Year of the preſent Reign a Proclamation iſſued, that all Men ſhould repair to certain Parts of the Kingdom, and continue there till the Danger was over; and the Reſolution of the Judges, the laſt Year, that the King might command the Subject to provide Shipping for the Defence of the Realm, he thought was ſufficient to ſatisfy all reaſonable Men of the Legality of ſuch Commands: However, the King had now given leave, that the Matter ſhould be publickly debated for the Satisfaction of his Subjects, and that the Records might be ſearched; and he obſerved Mr. *St. John* had taken great Pains in it: But the Records, that had been cited by him, were not of ſuch Weight, as thoſe produced for the King; for, if his Predeceſſors had ſometimes, for the Eaſe of his Subjects, remitted any Thing, this was not of that Weight as the ſhewing the conſtant Uſe of that compulſive Power uſed be the Crown, and obeyed by the People: If any King had ſpoken in gentle Terms, as King *John* when he was depoſed, this would not be of that Force as the Words uſed in the Writs.

It had been ſaid, that the King had a private, and a legal Will: That he could not act in many Caſes but by certain Rules, and

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and by the Mediation of others; and, particularly, that he could not ſit in Judgment himſelf, but muſt Adminſter the Laws by his Judges; which he denied; for the Pleadings in the King's Bench were *coram Rege*. *Edward* IV. ſat there in a Trial of *Rape*; and the famous Judge *Popham* ſat at the King's Feet, and other Judges on each Side of him; And King *James* actually adjudged thoſe two Caſes, *Bellingham*'s and Sir *Thomas Lake*'s: Nor did the Book, cited to prove the contrary, ſay, the King ſhould not judge; but that, if one was convicted before the Judges, the King ſhould not ſet the Fine, becauſe he did not hear the Cauſe.

It had been urged, that this Writ of Shipping made a Change in the Law, which could only be altered by Act of Parliament; but here was no Change in the Law, it having been the Cuſtom of all Ages: Nor was it any Argument, that, becauſe the King could do a Thing by Parliament, he could do it no way elſe. As to the Survey that had been taken of the King's Revenues, Tenures by Knight's Service, the Profits of Wards, Reliefs, *&c.* there was no Authority to ſhew that theſe were intended for the Maintenance of Wars; for theſe were reſerved for the conſtant Support of the Government, whether in Peace, or War: Nor could theſe, and the Service of the Cinque Ports be ſufficient to defend the Nation againſt an Invaſion: The whole Body of the Kingdom muſt, and ever did, contribute to the Defence of it; in which all were concerned: Nor was Tonnage and Poundage ever intended for extraordinary Service, but only for the conſtant Guard of the Coaſts in Time of Peace: Queen *Elizabeth* had Tonnage and Poundage; the Service of the Cinque Ports, *&c.* and yet her People gave her Subſidies; and ſhe raiſed both Men and Money, for the Defence of the Realm, by her Commiſſions, beſides.

It was true, nothing ought to be taken from the Subject ordinarily, but in Parliament; but that did not prove, he was not to contribute to his own Defence in Caſes of imminent Danger: It was admitted, indeed, that the King ought to have the Direction of the War; but to what Purpoſe was this, if he could command neither Men, or Money? Nor was it a good Argument, that the King could not command the Aid of his Subjects, becauſe he ſometimes borrowed Money of his Subjects: And though it had been ſaid, our Kings had maintained Armies themſelves; it did not follow from thence, that the King could not command his People to attend him, or his Lieutenant, as had been the Practice of all Ages.

As to the Statutes that prohibited the levying Money on the People, without Conſent of Parliament; This muſt be underſtood of unjuſt Exactions, as appeared by thoſe very Statutes, and of ordinary Caſes; not where the whole Kingdom was in Danger, as was admitted by the Demurrer: And there might be Danger foreſeen by the King, though no War was actually proclaimed; of which the King was the only Judge.

Mr. *Holborne*, another of Mr. *Hampden*'s Counſel, obſerved on his Behalf, That upon the 4th of *Auguſt*, 11 *Car.* I. the Day of the Date of the Writ, the King could not charge the County of *Bucks*, to find a Ship at their own Charge; for that it did not appear by that Writ, that in the King's Judgment, the Kingdom was in Danger of being loſt; or, if it did, that the Danger was ſo inſtant and unavoidable, that it neceſſarily required this Aid; and could not expect a parliamentary Conſideration; and laſtly, that the Truth of this could not be legally proved by the King's Certificate.

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Mr. Holborne's Argument for Mr. Hampden.

The Writ only mentioned, Loſſes of Merchants by Pyrates and Sea-Robbers; no Danger to the Kingdom, or People in general or ſuch inſtant Danger, at leaſt, as to require this Command in the Writ, even in the King's Judgment: There were above two hundred Days between the *Teſte* of the Writ, and the Rendezvous appointed by it: The ſummoning a Parliament required but forty Days; and in the remaining Time the Parliament might have conſidered of the Defence: The only Doubt was occaſioned by the *Mittimus*, which recites the Writ of the firſt of *Auguſt*, and then adds, *Quia ſalus Regni periclitabatur*, which, it was ſaid, the Defendant had confeſſed by his Demurrer: And, if that did not hold, that the King, who was the ſole Judge of the Danger, had certified it under the Great Seal: That the Words *Salus Regni periclitabatur* were but relative, and referred only to the Dangers mentioned in the firſt Writ; neither could any further Clauſes be legally added in this, tending to the ſame End; and conſequently, their Demurrer was no Confeſſion of any ſuch Danger.

And had the Words been poſitive, the Word *Salus* was but a metaphorical Expreſſion, and the Law would not endure Metaphors in Writs and Pleadings: Nor did theſe Words import immediate Danger of the Loſs of the Kingdom; for applying the Word *Salus* to a Natural Body, the Doctor might ſay, his Patient was not in Health, and yet, he might be in no Danger of Death: And the ſame Senſe it muſt have in the Body Politick. The Words might imply Danger, yet not ſuch a Danger as to threaten the immediate Loſs of the Kingdom.

As to the King's having declared his Opinion under the Broad-Seal, they made no Doubt of the King's Word, They believed there was a Danger, though not ſo apparent to them: But in legal Proceedings, his Majeſty's Opinion, and Certificate in Things of Fact, were not binding: But what he chiefly relied on was, that though it did not appear by the *Mittimus*, that the 4th of *Auguſt* the Kingdom was in Danger of being loſt, that was not ſufficient in Law; nor could their Demurrer hurt them; becauſe this did not appear in the Writ of the 4th of *Auguſt* itſelf; for how could the Subject know by the Writ of the 4th of *Auguſt*, what Dangers would be declared afterwards? And, admitting the King had ſaid, the Kingdom was in ſuch inſtant Danger of being loſt, and that it could not be prevented any other way; yet, if the

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contrary appeared in the Record, then neither was the Demurrer, or Confeſſion, or the King's Certificate, concluſive: Every Conſideration but thoſe of protecting the Merchants from Pyrates and Robbers, and the ordinary Defence of the Sea, muſt be thrown out, becauſe they were not contained in the firſt Writ: He ſaid, he thought he might, without further Argument, venture his Client's Cauſe upon this; and he ſhould be glad, if the Caſe might receive a Determination on the penning of the Writ: He was willing to decline the main Queſtion out of Duty to his Majeſty, *(viz) Whether by the fundamental Policy of* England, *the King could charge the Subject, out of Parliament, for the Common Good, or, for the neceſſary Defence of the Realm, if in his Majeſty's Judgment the Danger was inſtant, and unavoidable?*

To which the Lord Chief Juſtice anſwering, *They did not uſe to judge of Caſes by Fractions*, Mr. *Holborne* proceeded, and ſaid, Since it was their Command he ſhould go on, he hoped his Majeſty would excuſe them for arguing what could not elſe be determined, profeſſing, both for himſelf, and his Client, that when they mentioned, how far a Governor, ſubject to Error and Will, might uſe Regal Power, they acknowledged their preſent Happineſs, in being bleſſed with ſo juſt a Prince, that, were his Majeſty immortal, as he deſerved, and they were ſure his Succeſſors would inherit his Virtues, they ſhould wiſh the Regal Power might be unlimited, and free from Political Advice.

Then he proceeded to enquire, Whether the King could, out of Parliament, charge the Subject, either for the Guard of the Sea, or the Defence of the Kingdom, though he judges it in Danger of being loſt: As to the Diſtinction of Dangers, *ordinary* and *extraordinary*, there was no great matter in it, he thought; for, if the King was Judge of that Danger, then he had no Reſtraint but his own Will.

He acknowledged, indeed, that Property muſt yield to Neceſſity; and in Caſes of actual Invaſion, and inſtant Danger, it was not only in the Power of the King, but of a Subject, to enter upon another's Property: He may make Bulwarks, or do any Act upon any Man's Land, and invade any Man's Property towards Defence: Nay, he might prejudice the King himſelf, in Point of Property: He might take the King's Horſes, and blow up his Fortreſſes, to prevent their falling into the Enemies Hands: But then there muſt be actual and apparent Danger.

He knew it was held as a Maxim, *That the King could do no Wrong*; and that, therefore, the Law had repoſed this Truſt in him, of charging the Subject; but he could ſhew where the Law took notice, the King might do amiſs: The King had a double Capacity, as a King, and as a Man; and to ſay, as a Man, he could not err, was ſtrange: He was liable to Infirmities and Miſtakes, like other Men; and, leſt ſuch Infirmities ſhould injure the Body politick, the Law had provided Means to prevent it; as the Writ of *Ad quod damnum*, if any Damage acrued to the Subject by the King's Grant, the Patent was nought: And though the King might grant Pontage, Paveage, and Murage, yet, he could not grant them, where there was no Occaſion, or a Sum that exceeded the Benefit the Subject was to receive by them: There were other Judges of the Juſtneſs of the Proportion, beſides the King, when a Patent came to be queſtioned: And, if the Law did not allow the King an abſolute Power in ſuch Trifles, it was not to be ſuppoſed he ſhould have it in Matters of this Importance; and that there ſhould be no Judge but himſelf, of the Occaſion, or Proportion.

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Where the Law allowed the King to charge any one abſolutely, it was not as a Subject, but as a Tenant by reaſon of Tenure, which aroſe by a precedent Conſideration: But even in thoſe Charges in reſpect of the Tenancy, where the Charge might come often, it was not left to the King's Judgment; as in Eſcuage, which was to be aſſeſſed in Parliament: The Aids to make his Son a Knight, or to marry his Daughter, are Things that could happen but once, and ſo were left more to the King's Diſcretion; and, in theſe Caſes, the Law did not give the King a Power of charging the Subject, but in reſpect of ſome Benefit received; and it was but juſt, that they, who received the Benefit, ſhould bear the Charge: The Crown had not a Power to lay a Charge for the publick Good; if the King created an Office, with a Fee, it was void: The King granted a Rate upon every Barge, that paſſed the Bridge, and it was held void; and ſo in ſetting up Lights for the Benefit of Sea-faring Men, he could not charge the Subject.

William the Conqueror granted, that all Men ſhould hold their Lands freed from all unjuſt Exaction, or Tallage; nothing was to be demanded but by Tenure; and ſuch Grants were as binding as Statutes now; and, if all Taxes were diſcharged, except thoſe ariſing by Tenure, conſequently, the Subject was liable to no other: The Exception explained the Rule: He inſiſted alſo, that the Charter of King *John*, *Magna Charta*, and the other Statutes made in Confirmation of it, extended to all manner of Taxes and Charges, except thoſe ariſing from Tenure: That thoſe Laws prohibited the laying any Taxes on the People, without Conſent of Parliament; and, if this was againſt Law, it was no Matter what the Practice had been. They muſt reduce Precedents to Laws, and not Laws to Precedents; and, notwithſtanding the Practice, the Subject made a continual Claim againſt them.

Danegelt, he ſuppoſed, was begun in the Time of the *Saxons*, by common Conſent, and raiſed but upon emergent Occaſions; and not intended as a Proviſion for all Times: He acknowledged, it was continued by ſome *Daniſh* Kings; but that it was generally decryed by the People, and, at length, relinquiſhed by the Confeſſor: That the Conqueror, indeed reſumed it, but the People made Terms with ſeveral of his Succeſſors, for laying it down; and the Charter of King *John* put an End to it. From whence he inferred, that though there were ſuch a Practice, under Pretence of defending the Sea, the People decrying it, it

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was not ſuch a Practice as could create a Law. When *Danegelt* was laid down, he acknowledged there was a Charge for providing Shipping in the room of it; but this too was generally decryed; and by the Statute, *De Tallagio non concedendo*, 25 *Edw.* I. an End alſo was put to that; and in the 29th of the ſame Reign, the King contracted for Ships at his own Charges.

He admitted alſo, That in the Reigns of *Edw.* II. and *Edw.* III. Writs were iſſued for Shipping againſt the Enemy; but theſe were *pro ſalvatione Regni*, and the King ſent Money for the Soldiers Victuals; and, though *Edw.* III. broke theſe Rates, ſometimes he repented of it, and demanded Supplies for Shipping in a parliamentary Way; and theſe Ship Writs generally ended with *Edward* III.

Then he proceeded to ſhew, That whatever Eſtate the King had, he had it in his politick Capacity, and was obliged, both in ordinary and extraordinary Caſes, for that Reaſon, to bear the Charges of the Defence of the Kingdom; and upon this Ground all Acts of Reſumption were founded; and the ancient Lands of the Crown were not alienable. When all the Lands were in the King, he diſpoſed of ſome for the Service of the Kingdom, from whence Tenures originally aroſe; and divers Lands were given on Condition of finding Ships, beſides thoſe given to the Cinque Ports: And though it had been ſaid, theſe were not ſufficient for the Defence of the Kingdom, in caſe of a Foreign Invaſion; it appeared by *Domeſday-Book*, that the King had a great Navy, and no leſs than ſixty thouſand Knights Fees, in the Conqueror's Time: So that there was Proviſion made for Defence in the Inſtitution of our Government, and particularly for the Guard of the Sea: The King alſo had the old Cuſtoms, Tonnage, and Poundage, *&c.* for this End.

And though all Property muſt ſubmit to Neceſſity, yet a diſtant Danger will not authoriſe a Man to invade another's Property. If Queen *Elizabeth*, did in the Year 1588. command the burning the Corn, and other Proviſions, if the Enemy landed; he thought, ſhe could not lawfully command them to burn their Corn, before the Enemy landed. The King might command burning the Suburbs of a Town, to prevent an Enemy's poſting himſelf in them; but, if there was only a Fear of a War, the King could not command it. All poſitive Laws muſt ceaſe, in Time of extreme Danger: But whether all Laws relating to our Perſons and Properties ceaſed, when the Danger was but *conceived*, he ſubmitted to their Lordſhips.

But admitting the King could command his Subjects to find Ships, Whether he could give a Power to the Sheriff, to make an Aſſeſſment, as the Writ directed, was a Queſtion? in all politick Charges the Law provided they ſhould be equal, as in the Caſe of Subſidies and Fifteenths; and in *Danegelt* they taxed by Hides: But how the Sheriff ſhould have Knowledge to charge all Men's Eſtates equally, he was at a Loſs to conceive. If the Law entruſted the King with this Power, it did not entruſt the Sheriff, and Under-Sheriff: Aſſeſſments were uſually laid by others, and not by the Sheriffs. If a Hundred was charged, they had Ways of laying it on themſelves proportionably; and if ſuch a Levy was made, it was a Queſtion, Whether the Money could be brought into the *Exchequer* by *ſcire facias*? He believed, this was the firſt Writ that ever was of the kind: It not only gave a Power of levying the Money, but preſcribed the Way; by Impoſition, by Diſtreſs, and Sale: He knew no Caſe could match it.

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The Attorney-General's Argument for the King.

Sir *John Banks*, the Attorney-General, replied to Mr. *Holborne*, the Defendant's Counſel: And firſt he laid down this Poſition; That the King, as he was King of *England*, *pro defenſione regni*, *tuitione maris*, *&c.* when in his Judgment he conceived it a Time of ſuch Danger, as neceſſarily required the Aid commanded in this Writ, might command and compel his Subjects, *per totam Angliam*, to ſet forth Ships, with Men and Ammunition, and double Skippage, as well by his Writ under the great Seal, as by Conſent of Parliament: and held, that this Power was not derived from the People, but reſerved to the King, when poſitive Laws firſt began. The Regal Power was not confined to the politick Advice of Parliament; he might exerciſe it without Conſent of Parliament, and even when Parliaments were ſitting, as his Anceſtors had ever done.

The *Romans* governed this Iſland five hundred Years, by their Prefects, without Controul: The *Saxon* Kings ſucceeded them; and it appeared from ancient Grants and Edicts, that the naval Power was commanded by thoſe Princes, for the Defence of the Realm.

King *Edgar*, who began his Reign in the Year 959. ſet out a Navy of 3600 Ships, and commanded, that every Year, at *Eaſter*, a Fleet of 3000 Ships ſhould be equipped for the Sea-Service. King *Ethelred*, in the Year 1008, fitted out a Royal Fleet, commanding every 310 Hides of Lands to find a Ship, and every eight Hides to find a Man, to rendezvous at *Sandwich*, and oppoſe the *Danes*; at which Rate, there muſt be aſſembled 11000 Ships, and 45000 Soldiers, and upwards: And this was done by the King's ſole Command, *per totam Angliam:* And in the 36th Year of his Reign, he commanded a Fleet to be ready every Year at *Eaſter*, under a certain Pain. King *Canutus*, the *Dane*, alſo commanded a naval Armament yearly; and this was done by the Advice of the Lords; and if theſe were to be deemed Acts of Parliament, or Laws, they were confirmed by *William the Conqueror*. He held, the King of *England* was an abſolute Monarch; nothing could be aſcribed to a King, but what was inherent in his Perſon, as appeared both by our Records, and Acts of Parliament: And the Mirror that was written before and at the Conqueſt, declares, that the King had the Supreme Dominion by Sea and Land; and the very Soil of the Sea belonged to him, when the Waters left it.

As the Law had entruſted the King with War and Peace, no private Subject ought to diſtruſt him, and inſinuate, that he would cauſe Forces to be muſtered, and Ships to be provided, where there was no imminent Dan-

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ger: He was the ſole Judge, and ought not to be queſtioned: He had no Superior, but God, according to *Bracton*.

It had been objected, indeed, that there muſt be a concurrent Power, a Politick Advice in Parliament: But Kings were before Parliaments, and might *ſtatuere*, without the Aid of Parliament. There was a Time, when no municipal Laws were eſtabliſhed, but Kings governed by natural Equity; and ſince there were poſitive Laws in *England*, it was evident from the Records, that they had preſcribed the Time for iſſuing theſe Writs, the Number of Ships, the Time of Rendezvous, and how long they ſhould remain upon the Sea, for the common Defence. The King, at this Day, could impower a Corporation, to make Laws for their Good; and it was ſtrange he ſhould not have that Power in himſelf, for the General Welfare of the Kingdom.

The Kings of *England* had at all Times commanded what was neceſſary for the common Defence; as the walling of Towns, of which the Precedents were numberleſs. He alſo laid Embargoes on Shipping, for the Defence of the Realm, and in all Ages made Ordinances, relating to the Royal Navy, by himſelf, by his Council, and by the Advice of the Peers; and ſuch Ordinances had been obeyed, even while Parliaments were ſitting; and granted other Supplies for the War; which was a ſtrong Argument, that the King needed not the Aid of Parliament, to command his Forces: And in the 13th of *Edw.* III. when the King condeſcended to ask the Advice of the Commons, for the Guard of the Sea, the Commons declared, they had nothing to do with it; they had no Cognizance of it.

He ſaid, he had collected five hundred Precedents, whereby it would appear to the Court, that theſe Writs had been iſſued by the King's Mandate, without Advice of Parliament; and ſhould not theſe Precedents, ſome of them before *William* I. and continuing for ſo many hundred Years, obtain the Force of a Law, though they had been diſcontinued ſince the 50th of *Edw.* III. as Mr. *Holborne* affirmed, and in which it appeared he was miſtaken, there being great Numbers of Ships commanded into the Service in like Manner, in the Reign of *Hen.* VI. And, though theſe Writs had ſometimes been petitioned againſt, it appeared, that the Service nevertheleſs went forward; and the Anſwer the King gave to them *le Roy's aviſera* was always the Anſwer given when he refuſed a Bill. It appeared, the Service had always been done, the Mariners Wages paid by the Country, and that ſome Men had particular Diſcharges; for that they were in the King's Service, or that they lived near the Sea-Coaſts, 23 *Edw.* III. M. 14.

That theſe Writs were iſſued, not only in Time of actual War, or on an Invaſion, but when the King *conceived* Danger might enſue, *Rot. Clauſ.* 48 *Hen.* III. M. 2. It appears in the Reign of *Edw.* III. that the King, *hearing* the *French* had an Intention to invade the Realm, ſent out his Orders to provide Ships: The Words uſed in thoſe Writs were *Ut Audivimus: Ut Intelleximus: Quia vulgaris opinio Regnum noſtrum Angliæ invadere*; therefore he commanded a Fleet to be fitted out to Sea, and Forces to be levied by Land: And here he produced Precedents, ſhewing, theſe Writs had been iſſued at the ſame Time Supplies were given in Parliament for the War, and that this Service was required of the Inland, as well as of the Maritime, Counties, and obſerved, that the Rule in Law was, that every one, who received a Benefit, muſt afford Contribution.

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By the Charter of *Edw.* I. the Ports were to find fifty two Ships: But when the Service required it, *All* their Ships were preſſed into the King's Service: That the Ports were utterly unable to perform this Service, now the greateſt Part of their Trade was gone: There were few Ports had any Trade at this Day, except *London*, *Newcaſtle*, *Briſtol*, and *Hull*. The Wealth of a ſingle Portſman in thoſe Days, was equal to the Wealth of a whole Town at preſent: And if the Ability of the Maritime Towns failed, it muſt be ſupplied by the reſt of the Kingdom; the Nation was not to be left defenceleſs. Before there were Commiſſions of Sewers, if a Man, who was obliged to defend the Sea Banks, was not able, the County were obliged to contribute to it; becauſe they might receive Profit or Loſs by it; And agreeable to this was the Caſe of the Iſle of *Ely*, where all that had *ſalvationem & damnificationem* were obliged to contribute. The Objection, that Inland Towns had been diſcharged upon Petition, was nothing to the Purpoſe, unleſs they had ſhewn the Reaſon of ſuch Diſcharges; for that the Town of *Beverly* inſtanced in, was diſcharged by Virtue of a Charter of Exemption: and others had been diſcharged, as being exempt from the Admiral's Juriſdiction.

Then he produced Precedents to ſhew, that theſe Writs had been iſſued, where no Cauſe had been declared, no manifeſt Danger expreſſed, or againſt what Enemy the Armament was intended, as *Rot. Pat.* 13 *Hen.* III. M. 5. a Writ commanding the Sheriffs of *Kent* and *Eſſex* to take up all Ships in thoſe Counties, to be ready at *Portſmouth*, to go upon ſuch Service as we ſhall command. So in the Reigns of *Edw.* I. *Edw.* II. *Edw.* III. and *Hen.* VI. Writs were iſſued, for fitting out Ships, and the Service concealed; nor was it always proper to divulge the Reaſons of Warlike Preparations: And yet this was the great Objection made to the Writ of the 4th of *Auguſt*, that the King had not declared ſufficient Cauſe for iſſuing it: He had not acquainted the Counſel at the Bar, with what was not fit to be communicated even to the Privy-Council, but reſerved to the Council of War: But, had there been fewer Reaſons given, it had been more agreeable to former Writs; and, notwithſtanding what had been ſaid to the contrary, the ſame Power of Aſſeſſment had been granted by them, and ſometimes Levies made by Diſtreſs and Impriſonment; nay, by the Seizure of Land and Goods, and the

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Charge laid on the Inland Towns, as well as the Maritime. *Rot. Scot.* 8 *Edw.* II. M. 9. *de navigio providend' &c.* That theſe Writs had been directed alſo to Sheriffs, as well as to Commiſſioners; and the Lands of Sheriffs had been extended for their Negligence in executing theſe Writs; and they had been commanded to levy the Money, by Diſtreſs and Impriſonment of thoſe that refuſed.

As to the Objection, that a Parliament might have been called Time enough, to have raiſed Supplies in the ordinary Way; it was known their Proceedings were very ſlow, and they might have diſappointed the King; and the Time of Preparation, and Continuance of the Service, was ever left to the King. It appeared by the Council Books, that the Preparations made againſt the *Spaniſh* Invaſion, were in *Octob.* 1687. and their Fleet did not ſet Sail from *Spain*, till *June*, 1688. Nor did the Queen think fit to call a Parliament in all this Time; but, by an Order of Council, ſhe commanded a Royal Fleet to be fitted out at the Charge of the Subject: From whence it appeared, that there was not any Particular contained in this Writ, but what was warranted by Precedents, and that in a much higher Degree. And here he produced ſeveral more Precedents to ſhew, that ſuch Defence by Shipping, had been required, not only of the Maritime Places, but *per totam Angliam.*

As to the Charter of King *John*, which had been mentioned, it was obtained by Force of that King, in his Diſtreſs, at *Running Mead*, and recalled the next Year; nor was it ever after confirmed, or inſiſted on: And the Statute of *Magna Charta* took away nothing that of Right belonged to the Crown: Theſe Writs continued to be iſſued afterwards, which ſhewed that *Magna Charta* did not affect them. The ſame Anſwer he gave to the Statute *de Tallagio non concedendo*; for this was not properly an Aid, but a Contribution of King and People, for the Defence of the Realm; and the 25 *Edw.* I. expreſly excepts ſuch Aids as have been due and accuſtomed. The Practice in the Reigns of *Edw.* I. *Edw.* II. *Edw.* III. and *Rich.* II. ſhewed plainly, that thoſe Statutes never intended to take away this Branch of the Royal Power, which was one of the King's higheſt Prerogatives. The Statute of 1. *Edw.* III. indeed ſaid, that none ſhould be compelled to go out of his County, but where *Neceſſity* required; and this Writ required no more: There was a *Neceſſity* in the King's Judgment; and ſome of the following Statutes related to foreign Wars: That the 1. *Edw.* III. reſerved a Power in the Crown, in Caſes of *Neceſſity:* And as to that Reſolution, in 2 *Rich.* II. that the Commons could not be charged, but in Parliament; this was no Act, and was in the Non-age of a Prince, who did not aſſent to it: That the Acts of Tonnage and Poundage, which were ſaid to be given for the Defence of the Sea, appeared to have been given in the Reigns of Queen *Elizabeth* and King *James*, for the *ordinary* Defence of the Sea: And as to the Petition of Right, it was declared by all, that there was no Intention of leſſening the King's Prerogative by it: He did not inſiſt on a Power of laying Impoſitions on the Subject, out of Parliament; it was not in Queſtion here: No Man's Property was invaded, or Goods ſeized, unleſs he incurred a Forfeiture by Contempt; and by a wilful Contempt the Subject might loſe his Property. *Dyer* 16. & 13. *Eliz.* 296. if the King Command a Subject to return home, and he refuſes, he ſhall forfeit his Goods for his Contempt: So if any one wilfully contemn the King's Writ, he ſhall be diſtreined: But this is no Invaſion of the Subject's Property.

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As to that Objection, that the Revenues of the Crown would defray all ordinary and extraordinary Charges; and that the Tenures by Knight's Service, the Profits of Sturgeons, Whales, &c. were reſerved for theſe Purpoſes, every one knew, that the King's Revenues would not anſwer the Expences of his Civil Government, and much leſs were ſufficient for the Defence of the Kingdom: And to ſay, that every Man, by the Inſtinct of Nature, would contribute to the Defence of the Kingdom, when there was a *real Neceſſity*, was extremely ridiculous. If every Man was made Judge of the Danger, and of what Share he ought to contribute to the Defence, it was not to be expected there would be any Defence made to the Purpoſe: God was pleaſed anciently to appoint Captains and Leaders to his People: An Army left to themſelves (without a General, or Commander), to do what was Right in every one's Eyes, was not likely to do much in the Defence of the Kingdom. This muſt be ſaid therefore only to captivate the People, by ſuggeſting, that every Man was veſted with a kind of ſovereign Authority, to direct and controul his Prince, whenever he ſaw fit.

It had been ſaid, that it was better to ſuſtain a Miſchief, than an Inconvenience, whereby every Man's Property might be taken from him, as often as the King pleaſed: But ſurely the Loſs of the whole Kingdom, wherein the loſs of Liberty and Eſtate was included, muſt be of worſe Conſequence than the taking a ſmall Contribution, towards the common Defence, in a Caſe of Neceſſity. The former was a Miſchief that deſtroyed both the Head and the Members: He wondered therefore, to hear the Defendant's Counſel apply that Rule to this Caſe. As to that Exception, that a *Scire Facias* ought not to iſſue for the Debt; for that the Writ of the 4th of *Auguſt* directed it to be levied by Diſtreſs; and becauſe it was no Debt to the King; he anſwered, that whoever detained a publick Duty, might be queſtioned for it by the King; and whatever was *pro communi utilitate*, might be levied by Proceſs out of the *Exchequer*; concluding, that there was no Act of Parliament that deprived the King of the Power of commanding a Fleet to be equipped, at the Charge of the Subject, for the

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the common Defence, when he found there was a Neceſſity for it: And, had there been no Law to compel the Performance of this Duty, Nature, and the inviolable Laws of Self-Preſervation, ought to move the Subject to obey it. The King was the Centre wherein they all met; the Soul of the Body politick, whoſe proper Act it was to command; and he humbly deſired their Lordſhips Judgments therefore for the King.

Then the Judges proceeded to deliver their Judgments in the Caſe: And firſt, Sir *Francis Weſton*, one of the Barons of the *Exchequer*, who ſaid, he conceived there was ſufficient Matter to charge Mr. *Hampden* with the twenty Shillings, aſſeſſed on him; and therefore he gave his Judgment for the King. There was a Rule in Law, he obſerved, that if a Man demurs generally to a Writ, he confeſſes all the Matters of Fact that are alledged: So that all the Dangers alledged in the Writ, were confeſſed by the Demurrer of the Defendant; and though it was objected, that the Allegations in the Writ of the 4th of *Auguſt* only were confeſſed, the Demurrer ſaid, that the Writ with the reſt of the Proceedings and Schedules, did not contain Matter ſufficient; ſo that they were to give Judgment on the whole: And the Writ of *Mittimus* ſaid, *Salus Regni periclitabatur*. It had been objected indeed, that *Salus* ſignified Health, but it ſignified Safety alſo; and though it was ſaid, the Danger was not fully ſet forth in the Writ of the 4th of *Auguſt* he anſwered, it might not always be proper to divulge what Danger the Nation was in: But in the Writ of the 4th of *Auguſt*, there was not only a Danger from Pyrates mentioned, but that the Dominion of the Sea was in Danger of being loſt; and that there were great Dangers apprehended from the Nations that were at War round about us; and they ought to believe this, if there was no other Reaſon for it, but that the King declared it: But it was evident to all Men, the Kingdom had actually been in Danger for three or four Years laſt paſſed, from the great Fleets that had been fitted out, and the Land Forces that had been raiſed, by the neighbouring Nations; and had we not had a good Fleet at Sea, we muſt have been expoſed to their Inſults and Invaſions.

The Judgment of Sir Francis Weſton, *one of the Barons of the* Exchequer.

It had been objected, that the Money thus raiſed for Shipping, might be applied to other Uſes: But there was no Colour for ſuch a Suggeſtion, nothing was ſaid of any Money to be paid to the King, but the Sheriff was to rate the County *ſecundum facultates*, towards providing a Ship.

And whereas it is ſaid, the Party was to be impriſoned, and his Goods taken away, he anſwered, The *Scire facias* was not to ſhew Cauſe, why he ſhould not be impriſoned, or his Goods ſold; but, why he ſhould not be charged with the Money aſſeſſed upon him.

It was urged, That the Defence of the Kingdom lay upon the King; becauſe he had Knights Service, Eſcuage, and other Services, to enable him to do it: But theſe were Tenures reſerved on ſeveral Grants made by the King; and he was no more bound to defend the Kingdom on this Account, than his Subjects, who had the like Tenures: And, as to the Service of the Ports, every one knew that this was not a ſufficient Defence for the Kingdom at this Day; and cited abundance of Writs that had been iſſued for the Defence of the Sea. Then he obſerved, that, of the fifty two Counties of *England* and *Wales*, thirty three were Maritime Counties, and the Inland but nineteen, whoſe Contributions did not amount to above a fourth Part of the Charge; ſo that the Cauſe was not of that Conſequence as was imagined: Indeed, the Maritime Places received the greateſt Benefit by the Sea, and were better prepared againſt ſudden Invaſions; and therefore Writs, for the moſt Part, iſſued to the Maritime Places: But as the Inland Counties alſo received Protection from this Defence, they ought to contribute towards it when there was Occaſion, as it appeared they had actually done. *Clauſ.* 48 *Hen.* III. *M.* 2. A Writ was directed to the Mayor and Bailiffs of *Bedford*, to raiſe Horſe and Foot, and march to the Sea-Coaſts, to oppoſe an Invaſion. *Rot.* 26. *Edw.* I. *M.* 5. Writs were directed to the Sheriffs of *Hertford*, *Eſſex*, *Nottingham*, *Derby*, *Huntington*, *Cambridge*, &c. *pro cuſtodia Maritima*.

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He did not think the Aid demanded by this Writ was within the Meaning of the Statute *de Tallagio non concedendo*; for by the Words *No Aid*, it was agreed, that the Aid for marrying the King's Daughter, or making his Son a Knight, were not meant; and if, by no Tallage, it had been intended the King ſhould demand no Money, then all Fines, Amerciaments, and all lawful Impoſitions due to the King, were taken away; and therefore, this could not be the Meaning of it: He conceived it was meant only, to take away all Taxes and Tallages that were unlawful.

The ſtrongeſt Statute that had been cited was, 14 *Edw.* III. which ſaid, That the Subject ſhould not be taxed, without a Parliament, for the Defence of the Kingdom; but then, they did not ſhew by any Act, that the King was to be charged with the Defence of the Kingdom; but, ſuppoſing the Act to be as ſtrong as they would have it, in the Caſe of a ſudden Invaſion, which the King was unable to reſiſt without the Aid of his Subjects, muſt they not give way to Neceſſity, and aſſiſt him, rather than the Kingdom ſhould be loſt? and, if they admitted, that Acts of Parliament muſt give way to Neceſſity, it was all that was contended for.

The King was no more obliged to call a Parliament, than Queen *Elizabeth* was, in the greateſt Danger in 1688, or on the Rebellion in the North: She raiſed Forces by Sea and Land, at the Subjects Charge, when there was but a *Rumour* of the *Spaniards* Intention to invade the Kingdom, and it never was complained of by the enſuing Parliament; on the contrary, they raiſed Money to repay what ſhe had expended, or borrowed; and the ſame Acts of Parliament were then in Force as were now. It was objected, indeed, that the King might pretend Danger where there was none; but, if this Power was in the King, it was not to be taken away, becauſe he might miſemploy it: If the Sums raiſed had been miſapplyed,

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misapplyed, there might have been some Colour for a Complaint; but the Money was expresly for a Ship; and if they would have taken any Advantage of that, they should have pleaded it. There did not appear any Money to be coming into his Majesty's Hands: Nay, the Writ expresly said, That no *Part of the Money should be converted to any other Use, but that of Building a Ship.*

He thought the Sheriff a very proper Person also, to assess the County, as being best acquainted with it; and a *Scire Facias* might very properly issue for it: A Writ was sent to the Mayor and Bailiffs of *Oxford*, to repair the Walls and Ditches of that Town; and the Subjects taxed for that End, notwithstanding those Acts which declared, that the Subject should not be taxed for Defence, without a Parliament; and with much greater Reason ought the Subject to be charged, towards the Repair of the wooden Walls of the Kingdom: There was no Act for taking this Charge by Writ away; it was a general Custom; and general Customs made the Common Law of *England:* They must try new Causes by the old Laws, and do as they had done in former Times: He was persuaded in his Conscience there was immediate Danger; and there was a Necessity this Danger should be prevented: He conceived the Proceedings were legal; and that there was sufficient Cause to charge the Defendant with the twenty Shillings assessed on him; and that he ought to pay it.

The Judgment of Sir Francis Crawley.

Sir *Francis Crawley*, one of the Justices of the Court of *Common Pleas*, gave his Judgment next: He admitted, that in ordinary Cases the Charge of defending the Realm belonged to the King: He had the Customs, for the Protection of the Trade of the Nation against Pirates, and Enemies; and in extraordinary Cases, the Charge of the Defence ought regularly to be supplied by Parliament, and could not be done without it. The same Law which required the King to defend his People, required the Subjects to grant him Aids towards that Defence. The Statute *De Tallagio non concedendo*, no doubt, was a Statute, and the Words were *Nullum Tallagium sine assensu Parliamenti*; and in 14 *Edw.* III. the King declares, he will impose no Charge, or Aid, on the Subject, but in Parliament: But still, if Necessity, and the Danger of the Commonwealth required it, and would not admit of calling a Parliament, the King might lay a Charge without their Consent: And the whole Island being concerned by the Event, the Charge ought to be borne in the inland Countries, as well as by those that were more immediately exposed: There were several Precedents, where Writs had gone to the inland Counties, for the Guard of the Sea, *Clauf.* 48 *Hen.* III. 24. *Edw.* I. 26 *Edw.* III. Writs into *Berks*, *Oxon*, &c.

The Kingdom had been conquered four Times: It concerned the King, the Head of the Commonwealth, to be circumspect: Even Conjectures and Probabilities were to be regarded: If there was a violent Presumption, that some potent Neighbour was preparing to invade us, was it not fit we should instantly prepare for our Defence? And there might be just Reasons of State, why these Things should not be revealed in Parliament, and so communicated to the Enemy; and the King might in such Cases, *Jure Gentium*, charge the Subject without his Consent in Parliament.

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As to the Statutes of the 25th of *Edw.* I. 14 *Edw.* III. and the Petition of Rights, 3 *Car.* I. he answered, that if there was an Express Statute, that the King should not have Aid of his Subjects, but in Parliament, were the Kingdom in never so much Danger, it would be a void Act; because it was manifestly unreasonable: To follow the Letter of the Law, in some Cases, would be the highest Injustice and Folly; the Laws of God and Reason were an implied Exception, and understood in every general Law.

This Right of Imposition without Parliament, appertained originally to the King, as he was a Sovereign, in Right of his Crown: They could not have a King without these Royal Rights: *No, not by Act of Parliament.*

And although the Word *salus* in the *Mittimus* was said to be a metaphorical Word, he held it to be certain enough; for in the Writ of *Oyer and Terminer*, the Words were *Omnes qui habent damnum vel salvationem.* But he was of Opinion, that the Writ of the 4th of *August*, without this, contained sufficient Matter for this great Preparation; for it said, *Lest we lose the Dominion of the Sea*; and was not that a good Reason, to prevent other Powers becoming Masters of the Sea? It was said also *Consideratis etiam periculis, &c.* considering the Danger is so evident and great in these warlike Times, that a Force is necessary by Sea and Land: They had also by their Demurrer confessed the Danger; and that it was present, imminent, and instant, and greater than the King, without the Aid of his Subjects, could resist; and, consequently, that it was dangerous attending the Delays of Parliament: He exhorted the Subject, therefore, to relie on their pious King, whose Prerogative and Right of Sovereignity it was to defend the Realm; and gave Judgment for his Majesty.

The Judgment of Sir Robert Berkley.

Sir *Robert Berkley*, one of the Justices of the *King's Bench*, delivered his Judgment next: He observed, that the Defendant had demurred generally, without any Protestation; and, acknowledging the Matter to be true, put it upon the Sufficiency, or Insuffiency, in Point of Law to charge him: He admitted, that the King could not, at all Times, and on all Occasions, charge the Subject, without Consent of Parliament: We were Freemen, not Slaves or Villains, to be taxed *de alto & basso.* Although this was a Monarchy, and the King had *Jura summæ Majestatis*, his Government must be according to the Laws of the Kingdom; and by those Laws the Subjects were not Tenants at Will of their Lands: They had a Property in their Possessions, and a Birthright in the Laws of the Kingdom: These Laws could not be altered, or abrogated, without their Consent in Parliament.

Then he proceeded to shew, that the ancient *Danegelt*, which was levied for the Defence of the Sea, was not levied by Authority of Parliament, but by the King's Command:

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However, he obſerved, that the *Danegelt* differed from the preſent Charge in ſeveral Inſtances; for that was annual, this only in caſe of Neceſſity; that was collected by the Hides of Land, this out of the perſonal as well as real Eſtates; that was an Aid of Money, this of Shipping and Armour in kind; that was to protect Sea-faring Men againſt Pirates, this for the common Defence of Sea and Land: In that the Clergy were originally exempted; but this Charge was general upon all, without Exception: In the next Place he endeavoured to ſhew that the Charge he demanded was not within the ancient Acceptation of the Words, *Aid*, *Miſes*, *Priſes*, *Taxes*, *or Tallages*; or of the Word *Subſidy:* Theſe he agreed, could not be levied without Conſent of Parliament: That Aids were of two kinds; either 1. Such as were Aids and Services too; as to make the King's Son a Knight, or to marry his Daughter: Theſe Aids common Perſons had, who had Signiories, as well as the King; and, therefore theſe could not be meant by the Word Aids. 2. The ſecond ſort of Aids were granted the King for building Bridges, for his Wars: and ſometimes to be diſpoſed of at Pleaſure, *Rot. Parl.* 25 *Edw.* III. *n.* 12. *Miſes* were Preſents made to the King in Kind, at his coming to the Crown: *Priſes* were Part of the Subjects Goods taken from them, for the King's Uſe, without Pay; as Priſage of Wines: And Taxes and Tallages were Tenths, Fifteenths, or other Subſidies granted by Parliament.

Nor was the principal Thing commanded in this Writ to levy Money, but to provide a Ship; though the refuſing to pay the Duty, indeed, was, in effect, a Refuſal to obey the principal Command; for he that denied the Means, denyed the End: And this, concerning the Safety of the Nation; the King, as Head and Sovereign thereof had, incident to his Regal Office, a Power of Coercion, and might enforce thoſe to pay it who refuſed their Quotas. The *Scire facias*, however, was not to have Execution, as to the King's Money, or for a Debt due to the King, but to bring on a declaratory Payment, that Mr. *Hampden* ought to be charged twenty Shillings towards providing a Ship for the County of *Bucks*.

Thus, having ſhewn what the Caſe was not, he came to the grand Queſtion, Whether his Majeſty, to prevent the Ruin of the Kingdom, might not by his own Authority, without the Conſent of Parliament, impoſe a Charge on his Subjects in general, to provide ſuch Shipping as he in his Judgment found neceſſary to join with his own Ships, and attend the Service as long his Majeſty thought fit; and alſo to be at the Expence of Victualling and furniſhing them with all manner of Tackling, Ammunition, and Proviſions.

For ſolving this Queſtion he ſaid, he would conſider the fundamental Policy, Maxims, and Rules of Law, for the Government of the Realm. And firſt, he thought it plain, that the Government was originally Monarchical; and though Mr. *Holborne* had aſſerted, that the King could take nothing of the Subject without Conſent of Parliament, there were two Maxims which diſproved this: 1. *That the King was entruſted with the State of the Commonwealth*; 2. *That the King can do no wrong*. *Fitzherbert*, *Bracton* and *Glanville* all held, that the King muſt have Arms as well as Laws: Forces to defend the Kingdom againſt foreign Enemies, as well as Laws to adminſter Juſtice by at home: And, if he muſt have theſe, he muſt not want the neceſſary Means, or be dependant *ex alio-rumarbitro*; for it was a Rule in Law, *Quando quis aliquid alicui concedit, concedit & id ſine quo res ipſa eſſe non poteſt*. He held alſo, that the King, of mere Right, ought to have, and the People were bound in Duty to yield him, Supplies for the Defence of the Kingdom in Parliament: The ſame Law which obliged the King to Defend the People, obliged them to contribute towards their Defence: And the Kingdom wanting a preſent neceſſary Defence, and it being dangerous to wait for a Parliamentary Supply, the Duty was not therefore loſt, becauſe they wanted Time to obſerve the Form. He acknowledged, the Parliament was the ſupreme Court, or Council, of the King and Kingdom; yet ſtill it was but a Council: The King might call, prorogue, or diſſolve it at Pleaſure; and what he did therein, was looked upon as juſt and neceſſary.

Great Bodies, he obſerved alſo, moved ſlowly; and, though ſome held Parliaments could not err, it was evident particular Members might; and others might have ſiniſter Ends, and create Delays and Diſturbances; and Parliaments themſelves had ſometimes been cenſured, as unlearned and unmerciful.

This Point, of maintaining the Dominion of the Sea, was a weighty Conſideration; not only the well Being, but the very Being, of the Common wealth depended on it; and, therefore, it behoved the Subject to haſten to the Defence of it: *The Safety of the Publick was the Supreme Law*; particular Intereſts were not to be conſidered, where the publick Welfare was at Stake: He obſerved alſo, that, though there had been many Writs of this kind, in ſeveral Reigns, there never was an Action brought, till now, for any thing done in purſuance of them, unleſs in the Abbot of *Robertsbridge*'s Caſe; and there it was confeſſed in the Pleadings, that the aſſeſſing Men's Lands to contribute to the Guard of the Sea, by the King's ſole Command, was good in Law: And, it was remarkable, that whenever a Charge had been impoſed, without Conſent of Parliament, in a Caſe of Neceſſity, there was not one Inſtance of a King's acknowledging ſuch a Charge, to be againſt Law. In none of the Statutes that had been cited was there any expreſs Clauſe, importing, that no Charge ſhould be impoſed for neceſſary Defence, without common Conſent; and, if ſuch a Clauſe had been offered, he queſtioned if it would have been of any Force: But all theſe Statutes, being general, muſt have a reaſonable and equitable Expoſition: The Defence of the Kingdom, and the Safety of

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of the Commonwealth, muſt be underſtood to be clean out of thoſe Laws; otherwiſe the Laws that were made, for the Good of the Commonwealth, might prove the Ruin of it. He concluded, That, upon the Reaſons and Authorities cited, the twenty Shillings impoſed on Mr. *Hampden*, towards providing a Ship, was conſonant to Law; and, conſequently, Judgment ought to be given againſt him, *Quod oneretur*.

The Judgment of Sir George Vernon.

Sir *George Vernon*, one of the Juſtices of the *Common Pleas*, contented himſelf with giving his Judgment, without offering his Reaſons for it. He ſaid, he held, That the King, for the Publick Good, might charge his Subjects for the Defence of the Kingdom; and, that a Statute derogatory to this Prerogative would not bind the King: He might in Caſes of Neceſſity diſpenſe with any Law, and therefore, concluded, that Mr. *Hampden* ought to be charged with the twenty Shillings aſſeſſed on him.

The Judgment of Sir Thomas Trevor.

Sir *Thomas Trevor*, one of the Barons of the *Exchequer*, did ſpeak to the Caſe; but his Argument is wanting; only it appears he gave his Judgment againſt the Defendant.

The Judgment of Sir George Crook, *with his Reaſons.*

Sir *George Crook*, one of the Juſtices of the *King's-Bench*, argued on the other Side: He obſerved, that his Brethren had all argued one Way; and ſaid, he would willingly have concurred with them, if he could have ſatisfied his Judgment with their Reaſons; but he muſt not go with the Multitude againſt his Conſcience; declaring it to be his Opinion, that Judgment ought to be given for the Defendant; for which he offered his Reaſons.

He ſaid, it might be objected to him, that they had all reſolved the Caſe under their Hands; and he acknowledged, he had given his Opinion under his Hand in two Caſes; to the firſt voluntarily, in *December* 1635, as follows:

I am of Opinion, that where the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, of which his Majeſty is the only Judge, there the Charge of Defence ought to be borne by all in general.

This, he ſaid, he ſhould always maintain; for when the Kingdom was in Danger, the King might command every Man in the Nation, with all his Force, to come and defend it at all Times, and at all Places in the Kingdom; and if any one refuſed, he was fineable and puniſhable.

That the ſecond Opinion he ſigned, was in *February*, 1636. *(viz.) When the Good and Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, his Majeſty may, by Writ under the Great Seal, command the Subjects of this Kingdom, at their own Charges, to provide and furniſh ſuch a Number of Ships, with Men, Victuals, and Ammunition, and for ſuch Time as his Majeſty ſhall think fit, for the Defence and Safeguard of the Kingdom from ſuch Danger. And, that his Majeſty may compel the doing thereof, in Caſe of Refuſal and Refractorineſs; and in this Caſe his Majeſty is ſole Judge of the Danger; and where, and how, the ſame is to be prevented and avoided.*

He confeſſed, he ſubſcribed this Opinion; though he then diſſented, he ſaid, from his Brethren, and declared as much; for he conceived ſuch a Charge could not be impoſed but by Parliament; in which one of his Brothers agreed with him, and four others diſſented in ſome Particulars: But the greateſt Part ſeeming reſolved, and it being ſaid to be uſual, for the leſſer Number to ſubſcribe where there was a Difference; and it being agreed, that this Subſcription would not bind them, if it ſhould afterwards come judicially before them; and being aſſured, his Majeſty ſhould be acquainted which of them diſſented, he did conſent to ſubſcribe: But, this being before he had ſearched the Precedents, or heard any Arguments, he did not hold himſelf bound by that Opinion; and, if he had been once of that Opinion, yet, upon better Advice, he thought it no Shame to retract it.

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Then he proceeded to his Argument, and obſerved, that this was the firſt Writ ſince the Conqueſt, that ever iſſued to an Inland County, to prepare a Ship with Men, *&c.* for ought appeared by any Record; and, where there was no Precedent, according to *Littleton*, the Law would not allow of any ſuch Writ.

The King, he admitted, might grant Tolls, Fairs, Pontage, Piccage, Murage, *&c.* which were for the Good and Eaſe of the People, and the Profit of thoſe who took the Benefit thereof, and where the Sums were ſmall and reaſonable; but if they were great Sums, the Law adjudged them void. As to the Caſe of an Inundation, the King alſo might by his Commiſſion cauſe all thoſe who had Lands, or Commons, in the Level, to be contributory to the Sea-Walls: But this could not be laid upon a Town, or County, in general; only on ſuch particular Men as might have Loſs, or Benefit thereby; and this was to be ſettled by a Jury; and ſo it was at this Day on a Commiſſion of Sewers. 10 *Coke* 142. *The Caſe of the Iſle of* Ely.

And, whereas it was alledged, that this Charge was impoſed for the Publick Safety, and every one reaped an Advantage by it; he did admit, that in caſe of imminent Danger, there muſt be a Defence made, by every Man in Perſon, when the King commanded it: Every Man was bound *per ſe & ſua* to defend the Kingdom: But the laying a Charge on the Kingdom, either for making or preparing Ships, or levying Money in lieu thereof, was not to be done but in Parliament: If this Writ was allowed, no Man could tell what his Charge might be: And, though his Majeſty would uſe his Power moderately, Judges in their Judgments were to have regard to future Times: *Danegelt* was firſt inſtituted, on Neceſſity, to defend the Kingdom from the Ravages of the *Danes*; and, though it was at firſt but 10000 *l.* within two hundred Years it encreaſed to 48000 *l.* and who knew what Bounds this would have?

Tonnage and Poundage, it appeared, where granted in the Reign of King *James*, that

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the Crown might have Money in Bank for the Defence of the Sea; and thoſe Duties were taken now, and, he preſumed, applied to the ſame Uſe.

The leaving it to the Sheriff, to tax the People at Pleaſure, he held alſo, to be illegal; it ought to be done by a Jury, as in the Caſe of Sea-Walls: And, though it had been doubtful by the common-Law, whether ſuch a Charge might be impoſed by Writ; yet, ſince the Statutes *de Tallagio non concedendo*, and the other Acts that had been made, declaring, that no Impoſitions could be laid on the Subject, but in Parliament; the King could not charge his Subjects without their Conſent: Beſides the Queſtion was only upon the Writ of the 4th of *Auguſt*; for the Writ of *Mittimus* reciting, that *Salus Reipublicæ periclitabatur* was iſſued a Year and a half after the Writ of the firſt of *Auguſt*, and conſequently could not help it: Nor was this notified to the Sheriff, or the Inhabitants of the County, to induce them to provide a Ship; it was only a Notification to the Barons of the *Exchequer*, ſhewing, that this was the Reaſon of iſſuing the former Writ: Nor was it poſitively affirmed, that there was any Danger; but only ſaid, *Quia datum eſt nobis intelligi* that Pirates had done Miſchief: He obſerved further, That untrue Suggeſtions were frequently inſerted in Writs and Patents, which did not affect the King's Conſcience: The Law ever imputed them to thoſe who miſinformed the King, and thruſt in ſuch Suggeſtions; and therefore all Patents, granted on untrue Suggeſtions, were void: He admitted that, on a ſudden Danger, the King might command Men from all Parts of the Kingdom, for the Common Safety; but he could not command the Money out of his Subjects Pockets, by diſtraining their Goods, or impriſoning their Perſons, he conceived.

If any Dangers were apprehended from abroad, by the Confederacies of Foreign Powers againſt the Kingdom, there would be Time enough for aſſembling the Parliament, which, by the Inſtitutions of King *Alfred*, was to aſſemble twice a Year; and by ſome Statutes made in the Reign of *Edw.* III. a Parliament was to be holden once a Year, and oftner, if need required: And as, in this Caſe, there were ſeven Months between the *Teſte* of the Writ and the Rendezvous appointed, there was Time for a Parliamentary Supply; and it was not to be preſumed a Parliament would have refuſed to contribute what was fit for their own Safety and Defence.

He admitted, if a Statute was made, that the King ſhould not defend the Kingdom, it would be void; but, a Statute that Money ſhould not be levied, or Men compelled to build Ships, without Conſent of Parliament, would be a good Law, and agreeable to Reaſon: The King might reſtrain himſelf from laying any ſuch Charge on the People; and he was a Prince of that Juſtice and Piety, that he would not do it, if he was truly informed it was againſt Law. The principal Fault, therefore, was in thoſe who deviſed theſe Writs, and in his Judges, who declared they were lawful. He would not ſpeak againſt the King's Prerogative, he ſaid; they were ſworn to maintain it; but if this Charge was againſt Common Law, and againſt ſo many Statutes, then there was no ſuch Prerogative. *The King could do no Wrong* was indeed, a Maxim in our Law; for the Wrong was imputed to thoſe who adviſed and executed it, and not to the King, who might be abuſed by falſe Suggeſtions.

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Royal Power, he admitted, might be uſed in Caſes of Neceſſity and imminent Danger, when ordinary Courſes would not avail; as in a Rebellion or ſudden Invaſion: In ſuch Caſes Martial Law might be uſed, they were not to ſtay for legal Proceedings. But in Times of Peace, and no extreme Neceſſity, legal Courſes were to be uſed, and not Royal Power. That the King being impowered to command all Perſons in the Kingdom to the Defence of the Sea Coaſts, and to preſs all Shipping for the Guard of the Sea in Time of Danger; theſe had ever been deemed ſufficient againſt any Power whatever, and there was no Neceſſity of iſſuing Writs to every County of *England* to prepare Ships at their own Charge. In the 23d Year of *Edw.* I. the *French* King prepared a Navy, the Roll ſays, to invade the Kingdom, *Et Linguam Anglicanam de terra delere*, to blot out the *Engliſh* Name; whereupon, the King commanded all Ships and Men with Arms, to be in a readineſs; and the like Commands were iſſued in the Reigns of *Edw.* III. *Hen.* IV. and *Hen.* VIII.

And if ſuch a Charge might be laid on Maritime Places, yet he held it was not legal to charge inland Places, nor was there any Precedent for it; the Law did not require Impoſſibilities: This County had neither Ships nor Mariners; they were converſant in Husbandry, and ſcarce ever ſaw a Ship; and they were not obliged to look for Mariners in another County. When Writs had been awarded, therefore, to inland Towns, ſuppoſing them to be maritime, they had been diſcharged when the Truth appeared. He had diligently peruſed the Records, he ſaid, and did not find any Precedent of a Writ ſent to a Sheriff of an Inland County, to command their building a Ship at the Charge of the County.

There had, indeed, been Writs ſent to the Maritime Towns, to provide Ships and Mariners, and ſend them to the Place of Rendezvous in the Time of Danger; but even thoſe were moſt commonly at the King's Charges, though ſometimes at the Charge of the Ports and the adjacent Towns; which, he ſuppoſed, occaſioned the making the Statute of 14 *Edw.* III. Cap. 1. After which there was but one Record of ſuch a Writ iſſued to a Maritime Town, except thoſe iſſued 1 *Hen.* IV. which were complained of and recalled.

Then he proceeded to ſhew, that the Motives in the Writ were inſufficient for the commanding a Royal Navy to be equipped: In former Times the Inducements mentioned in the Writs were, That great Princes, in open Hoſtility, had provided great Navies and Armies to invade the Kingdom; but that ſuch Preparations ſhould be made againſt Pirates was never known; againſt theſe the Vice-Admiral with a ſmall Squadron was uſually employed

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ployed, and not the grand Fleet. There was no Fear of loſing the Dominion of the Sea from any Force that Pirates could raiſe, much leſs that every County ſhould be charged to ſend out Ships againſt them; and the Command, to provide Wages for the Mariners for twenty-ſix Weeks after the Rendezvous, was ſtill more illegal: Thoſe who held by Knights Service were obliged to be at their own Expences but forty Days. And in ſeveral Commiſſions of Array that had been iſſued, the People were to be at the King's Charges after marching out of their reſpective Counties; this Aſſeſſment, therefore, being entire, as well for Wages as other Charges, was utterly illegal.

Nor was the Command to aſſeſs Men at the Sheriff's Diſcretion, warranted by any Precedent; a Power given to Sheriffs to impriſon Men was illegal. No Man was to be arreſted, or his Goods ſeized, contrary to *Magna Charta*, as appeared from ſeveral Statutes that had been cited; and yet by colour of this Writ, the Sheriff might impriſon any Man, even a Peer. He held alſo that the *Certiorari* being awarded to the late Sheriff, was wrong awarded; for all Writs ought to be directed to the preſent Sheriff, requiring him to demand of the late Sheriff, what was done upon the former Writ; and the *Scire Facias* therefore grounded upon it was not good; nor did the *Scire Facias* ſhew to whom the twenty Shillings was to be paid, and conſequently was inſufficient. Upon the whole he concluded, that no Judgment could be given to charge the Defendant.

The Judgment of Sir William Jones.

Sir *William Jones*, another of the Juſtices of the *King's Bench*, then proceeded to give his Judgment, together with his Reaſons for it. He ſaid the Queſtion was not, Whether the King could draw this into a perpetual Charge, for it was founded upon a Fear of Danger, and when that ceaſed, the Tax muſt likewiſe ceaſe. *Bro. tit' Protection.* it was held the King could not grant a Protection for three Years, but he might renew it every Year, as there was Occaſion: So here the King, upon an imergent Occaſion, might command Ships; but he could not make the Charge perpetual, becauſe the Occaſion might ceaſe.

They had already delivered their Opinions, he ſaid in this Caſe, and ſubſcribed them: As for his Part, he was an old Man, ready to drop into the Grave, his Tongue and his Heart, therefore, ſhould go together. He declared he was ſtill of the Opinion he ſubſcribed; he ſaw no Reaſon to recede from it; he thought the Grounds of Law and Nature ſupported it; for theſe were undoubted Maxims; *Salus populi ſuprema lex. Qui ſentit commodum, ſentire debet & onus. Quod omnes tangit, ab omnibus debet ſupportari.* So that, when there was imminent Danger, the Charge of Defence ought to be laid on the whole Kingdom, which was not denied by the Defendant's Council. Indeed, it was not every Fear or Rumour that could draw this Burthen upon the Subject; but ſuch a Danger as the King in his Judgment declared did require a ſpeedy Defence; he was ſole Judge of the Danger, and how to prevent and avoid it: And *if the King was by Law to defend the Kingdom, he might certainly lay a Charge in order to it; for, if he could not, how ſhould he defend his People.* The King was by Law the Protector of the Perſons, Lands, and Goods of his Subjects; he had a Prerogative in them for this End, *not for his own Profit.* The King could not cut any Man's Woods, or dig Gravel in his Lands, for his private Uſe; but for the publick Good he might; and even erect Fortifications on any Man's Lands. And though the King could not command any Man to build his own Palace, yet he might command Pontage, Murage, *&c.* which were for the Subject's Benefit; and in the firſt Year of King *James* a Duty was laid upon Merchandize, without Conſent of Parliament, it being in a Caſe of Neceſſity, and for the publick Good.

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The Objections he obſerved were many, and his Brother *Crooke* had doubled and redoubled them: Brother, *continued he*, We ſit next one another, ancient Judges, though of different Opinions; I ſpeak according to my Conſcience, as you have done according to yours; you ſay, by the Laws of this Kingdom, the Subjects have a Property in their Gooods, ſo that without their Conſent they cannot be taken away. I anſwer, This does not trench upon their Properties: If this be a lawful Prerogative, how is the Subjects Property invaded? The Law annexed this Charge to the Lands and Goods of the Subject from the Beginning, and made them liable to it by tacit Condition. He would not have Men clamour, therefore, he ſaid, as if the Subject was diveſted of the Property of his Goods; when the Duty was to be applied to the Defence of the Kingdom, in which his own was included.

He ſaw no Reaſon why a Difference ſhould be made either between Inland and Maritime Places, ſince the Kingdom was one entire Body, and it was for the common Defence; the King might unite an Inland to a Maritime County; and, before the Diviſion of Counties, the Charge was general, all over the Kingdom. And whereas it was urged, that it would be a great Inconvenience, if the King might charge when and what he pleaſed by this Writ, he anſwered, as the Law repoſed this Truſt in his Majeſty, it was not to be preſumed he would require it of his Subjects, when there was no Occaſion.

It had been objected farther, that Dr. *Cowel* and Dr. *Manwaring* had been cenſured by Parliament for the like Tenets; but this was a Miſtake. He acknowledged they were deſervedly cenſured and puniſhed; for *Cowel* aſſerted, that the King might make Laws without a Parliament, and wrote againſt the Common Law: And Dr. *Manwaring*, in two Sermons, maintained, that the King was not bound to obſerve the Laws; that the Rights and Liberties of the Subject were at his Diſpoſal; and that the Authority of Parliament was not neceſſary for levying Subſidies: Whereas the preſent Queſtion was, Whether the King could not command the Subject to provide Ships, for the Defence of the Kingdom, in Time of Danger?

He held alſo, that no general Words in a Statute could extend to take away the King's Prerogative

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Prerogative; for, if they could, the Aids for making the King's Son a Knight, and for marrying his Daughter, would have been taken away, which it was admitted they were not. His Brother *Crawley* held, that even ſpecial Words in an Act of Parliament would not take away the King's Prerogative of Defending his Subjects. And he heard it reſolved in Parliament, in the firſt Year of King *James* I. when a Motion was made for diſſolving the Tenures by Knights Service, that ſuch an Act would have been void, becauſe they were inherent in the Crown, for the Support and Defence of the State; and 2 *Hen.* VII. an Act to reſtrain the King's *Non obſtante*, to diſpenſe with penal Laws, as not to pardon Murder, was held void. He was of Opinion alſo, that the Record expreſſed ſufficient Cauſe for the Crown to require this Aid. If the King affirmed there was Danger, this was not traverſable, and had he ſaid no more than *pro defenſione Regni*, it had been ſufficient. He gave Judgment, therefore, that Mr. *Hampden* ſhould be charged with the twenty Shillings, provided none of it came into the King's Purſe.

The Judgment of Sir Richard Hutton.

Sir *Richard Hutton*, one of the Juſtices of the *Common-Pleas*, delivered his Opinion next. He held, that this Charge could not be impoſed, but by Parliament: It was againſt *Magna Charta*, and the other Statutes made in Confirmation of it; which, he conceived, ſo ſecured the Subjects Property, that it could not be touched without an Act of Parliament. He cited *Forteſcue* alſo, who ſaid, in his 9th Chapter, That the King could not alter any Law: He governed his People, not only by Royal, but by Politick Power; and could lay no Charge on them, but in Parliament.

It had been objected, indeed, that this Royal Power was ſo inſeparable from the Prerogative, that an Act of Parliament could not take it away. And, he confeſſed, there were ſome ſuch inſeparable Prerogatives; as the Tenure *in Capite*, which the King could not releaſe: And, when a Law was propoſed, for the taking away the Court of Wards, in the Reign of King *James*, it was held, it would be a void Law: An Act of Parliament alſo, that the King ſhould not defend the Kingdom; or, that he ſhould have no Aids of the Subject towards the Defence, ſuch Acts would not be binding, becauſe they were againſt natural Reaſon: But here the King was not reſtrained from laying a Charge, but only tied to one Means; *(viz.)* to do it by Parliament: He did not ſee, but *Danegelt* might have been raiſed now, as well as formerly, if it had not been for the Statutes that had been cited; but, ſince thoſe Statutes, he held no Money could be levied on the Subject but by Parliament. As for Pontage, Murage *&c.* the Law allowed them, becauſe the Subject had a particular Benefit by them.

And although it had been alledged, that in this Caſe there was no Money to be paid by the Subject, but only a Ship provided by the Sheriff; and it was admitted that, if the Writ had been to levy Money, it would have been void; it did not appear by the Record, that any Ship was provided; and if ſo, a Writ could not iſſue againſt the Defendant for Diſobedience: Beſides, it was known to all the World, that not *Ships*, but *Ship-Money*, was wanted. If a Ship had been alledged to have been built, it might have been traverſed; but as the Caſe was, Mr. *Hampden* could do nothing but demur. He confeſſed, he had ſubſcribed the Reſolution, with the reſt of the Judges; but his Opinion was always againſt it. He ſigned in Conformity to the greater Number, as was uſual: And though they had been of Opinion, the King might charge the Subject, in caſe of a general Danger, they never meant a Danger from Pirates. He was ſtill of Opinion that in Time of War, when an Enemy was in the Field, the King might uſe his Subjects Goods, but not elſe. In the latter End of Queen *Elizabeth*'s Reign, her Majeſty deſired a Benevolence, and Money was gathered even in the Inns of Court; he himſelf paid twenty Shillings: But when the Queen was informed by the Judges, it was againſt Law, ſhe ordered the Money to be repaid; and he received his twenty Shillings again.

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He held, there was not a ſufficient Danger expreſſed in the Writ; and the *Mittimus*, which iſſued almoſt two Years afterwards, wherein it was ſaid, *Salus regni periclitabatur*, could not make that legal which was not ſo *ab initio*; no ſubſequent Matter could help it: The Power given to the Sheriff alſo, to impriſon and deſtrain thoſe who refuſed, was againſt *Magna Charta*. And the commanding the Sheriff to aſſeſs Men, he conceived, was illegal; becauſe it made him both Judge and Party, if he was to pay any thing for his own Eſtate: Nor could the *Scire facias* be awarded to one who was not Sheriff at that Time: The Money alſo was directed to be raiſed by Diſtreſs, or Impriſonment, and conſequently could not be raiſed by *Scire facias*. He admitted, the King might lay Duties on Merchandize, becauſe he defended the Merchants from Pirates. In King *James*'s Reign five Shilling a Ton was laid upon Currants, and adjudged legal: But as this Caſe was, he held, both as to Matter and Form, that they could not give Judgment for the King.

Judgment for the Defendant.

The Judgment of Sir Humphry Davenport, *Lord Chief Baron.*

Sir *Humphrey Davenport*, Lord Chief Baron of the *Exchequer*, in his Argument on this Subject, ſaid, That, according to what he underſtood of the Laws of *England*, Judgment ought to be given for the Defendant; for when he conſidered the firſt Command in the Writ of the 4th of *Auguſt*, That the County ſhould provide a Ship at their own Charge, and the ſecond, for Taxation; the one ſeemed repugnant to the other: For the firſt Command was general to all, and by the laſt, a Power was limited to particular Perſons, the Sheriffs, Bailiffs, *&c.* who muſt be exempted from the firſt general Charge, becauſe they could not aſſeſs themſelves; it ought to have been done by a Jury, *per ſacramentum proborum hominum.* The firſt Act which the Sheriff was commanded to do, he conceived, was by the ſecond Power diſcharged; and, as theſe Powers did not cohere, they were not warranted by Law.

Where

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Where Things were reduced to a Certainty by the King's Courts, indeed, the Sheriff might execute, take a Man's Goods, or imprison him; but, where there was an Uncertainty, the Law had annexed to his Office a Method of reducing them to a Certainty; namely, by a Jury, as in the Case of Partition by Parceners, *&c.* he was to impannel a Jury, to make an equal Partition.

He was of Opinion, the Tax was very fit to be imposed in a Time of Danger; but, that second Power given to the Sheriff, to free himself and lay it on others, was not good.

He did not think the Incursions of Pirates a sufficient Cause for such an Armament; but, as to those Expressions in the Writ, *Quia datum est nobis intelligi: Ut informatur: Vulgaris est optima opinio: Rumor est, &c.* they were well enough, according to the Precedents: The King need not declare, how he knew it, so he declared the Kingdom was in danger; he was the sole Judge of it, and his Certificate was not traversable. And, he observed further, that *prædones* mentioned, when *Danegelt* was given, were not ordinary Pirates, but such Powers as endangered the whole Kingdom: That Tax therefore was justly imposed to repel the *Danes*, who were common Enemies; but he held, it was taken away by the Statute of *Edw.* I. and the other Acts that had been cited. He was in doubt also, whether the *Certiorari* and *Mittimus* could revive the first Writ, which was not returnable, and never executed, according to the Tenor of it, within the Time prefixed. The Nature of a Writ not returnable was, to command a positive Thing to be done within a certain Time; and, if it was not done accordingly, there was an end of the Force of that Writ: So here, the Power given to the Sheriff, not being executed within the Time prescribed, could not be renewed; the *Mittimus*, in which those Words *Salus Regni periclitabatur* are inserted, could not revive, or inforce the Commands of the first Writ; it was no more than a Suggestion, upon which a *Scire facias* could not issue.

Again: This Money was appropriated to the preparing a Ship; but, it did not appear a Ship was built, a Collector appointed, or any Act done relating to it; therefore, how could they give Judgment? The *Scire facias* was for Mr. *Hampden* to shew Cause why he should not pay the Sum imposed on him: But, to whom the Money should be paid, it did not appear; and, therefore, he did not see how the Defendant could be charged with it.

As to the grand Question, he still held, that where the Kingdom was actually in Danger, or in Expectation of Danger, and the same was expressed in the King's Writ, his Majesty might charge his Subjects without a Parliament, for the Defence of it; and he was the sole Judge thereof: But, if the Danger was not so imminent, and a Parliamentary Advice might be had, then the Charge could not be legally imposed without a Parliament: And as to the Mandates in the Writ of the 4th of *August*, were not good, they could not give Judgment to charge the Defendant.

Judgment for the Defendant. The Judgment of the Lord Chief Justice Finch.

Sir *John Finch*, Lord Chief Justice of the *Common-Pleas*, proceeded to give his Judgment next: But, before he entered on the Merits of the Cause, he shewed by what Steps it was brought into the *Exchequer Chamber*. He said, the first Writs were issued to the Maritime Places and Post-Towns, the 20th of *October*, in the 10th Year of the present King; and, that his Majesty relied very much on the Opinion of the late Attorney-General, Mr. *Noy*, in it.

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That the Precedents were brought to the Chief Justices, and the Chief Baron, who having diligently perused them, did give it under their Hands, that the Dominion of the Sea belonged to the King; he was the sole Proprietor thereof, and the Defence of it belonged to his Majesty: That the Cinque-Ports had been required, heretofore, to provide such a Number of Ships, of such Burthen as Occasion required: As to the Time, Place, and continuance of their Attendance, it was at the King's Pleasure.

That, afterwards, the Danger growing general, and his Majesty conceiving it unreasonable, that the Maritime Places should bear all the Charge, where the whole Realm was interested, he required the Opinion of the Lord Chief Baron, and himself, concerning it; and they delivered their Opinion, first verbally, That, where the whole Kingdom was in Danger, the Charge ought to be borne by all his Subjects: And Writs being ordered accordingly, that to the Sheriff of *Bucks* was issued among the rest.

Afterwards, the Legality of these Writs being questioned, his Majesty required the Opinion of every one of the Judges separately; and every one, by himself, delivered his respective Opinion under his Hand: Particularly Judge *Crooke* subscribed singly by himself; and, where Opinions were so delivered, he conceived, they ought to produce very good Grounds for varying from them: And he affirmed, those Opinions were so delivered, that no one Judge knew the Opinion of the rest. That the 2d of *February*, 1636-7, his Majesty sent a Letter to all the Judges, to have their Opinions together; to which they returned their Answer the seventh: That the Judges, *Hutton* and *Crooke*, did then agree, the King was sole Judge of the Danger: (Though *Crooke* had said nothing of this in his Argument, and *Hutton* nothing against it:) But, they all declared, they did not deliver those Opinions as binding; nor did his Majesty require they should: However, they were soon after published.

Then he proceeded to the principal Points, and said he was of Opinion, that the Danger to the whole Kingdom ought to be expressed clearly in the Writ of the 4th of *August*: But then he conceived the Words *datum est nobis intelligi*, certain enough; it was sufficient that the King knew the Danger: And he observed, there were not only Dangers mentioned from Pirates, but from the neighbouring Powers engaged in War; for the Words in the Writ were, *Considerati periculis quæ undique his guerinis temporibus imminent', ita quod nobis & subditis nostris defensionem maris & Regni nostri omni festinatione qua poterimus convenit, &c.* And it might have been well enough without

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without the Preamble: The King need not declare the particular Danger.

And, though it had been objected by the Juſtices, *Hutton* and *Crooke*, that the Writ was in effect, *to raiſe Money, and not to build a Ship*; he put the Caſe, if either of them was to find a light Horſe and Arms, if he had none, he muſt hire, or buy them with his Money; but yet the Charge was not for Money, but for finding a light Horſe; and the requiring the County to build a Ship was a parallel Caſe; if they had not Materials, they muſt buy them: Here was no Money to come into the King's Purſe.

The Objection alſo, that *Bucks* was an Inland County, and knew not how to build Ships, was trifling; for they might, however, contribute to the building one in a proper Place: And, as the Defence of the whole Kingdom ought to be at the Charge of the whole Kingdom, ſo the Power of laying this Charge was, by the Policy and fundamental Laws of the Realm, ſolely veſted in the King: As the Law had given the King this Power, ſo it had given him the Means to put it in Execution.

And, although the Law gave every Man a Property in his Goods; yet every Man had a Property in another's Goods for the Publick Safety: Something muſt be ſpared, and employed, for the Security of the reſt; and the Intereſt the King had in his Subjects Eſtates, was for their Common Good. The Parliament, he confeſſed, was an excellent Means of charging the Subject; but not the only Means: The King held his Diadem from God, and all others held their Lands from him. He had a great Veneration for Parliaments, he ſaid, and ſhould ever gratefully remember the Honour the late Parliament had done him. In chuſing him their Speaker; but he wiſhed ſome had not ſown the Tares of Diſcontent in that Field of the Commonwealth.

It was certain Kings were before Parliaments: Anciently the Kingdom was governed by the Regal Power, limited by no poſitive Laws: The King had originally the Sovereignty of the whole Kingdom, and the Power of charging it by Sea and Land: And, as the Law ſtill gave the King the Power of defending the Kingdom, ſo it gave him the Power of charging the Subject for that End: If the Sea and Land conſtituted but one entire Kingdom, and the King was Lord of both, then was the Subject bound to the Defence of the Sea, as well as the Land: All were bound to find Ships, and other Neceſſaries, for that Defence; and, as they were Iſlanders, the Defence of the Sea was moſt neceſſary.

Then he obſerved, that there had not been cited one Authority to prove, that, in the time of Neceſſity and Danger, the King might not charge the Subjects for the Defence of the Kingdom: On the other Hand, all thoſe Authorities, which ſhewed the King was entruſted with the Defence of the Kingdom, and had Aids and Taxes given him in many ſuch Caſes, proved, that the Subjects, in Caſes of Neceſſity and Danger, was bound to pay them to the King for the Defence of the Realm. Thoſe Prerogatives alſo, of granting Pontage, Murage, and digging of Salt-petre, ſhewed, that for the Good of the Publick, the King was intereſted in the Eſtates of his Subjects, and might charge them for their Well-being, much more, when the very Being of the Commonwealth was at Stake, and in Danger.

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Beſides, by all the ancient Precedents that had been cited in the Reigns of *Alfred*, *Edgar*, and *Ethelred*, thoſe in the Reigns of K. *Edw.* III. *&c.* and thoſe in the late Reign of Q. *Elizabeth*, it appeared, that Writs and Commiſſions were iſſued for the Defence of the Kingdom: And, the Letters from the Lords of the Council in 88. had the Queen's Writs in them. Mr. Juſtice *Crooke* alſo had owned, that the Subjects were compellable to ſerve in their Perſons; and ſurely the *Bona Corporis* were ſuperior to *Bona Fortunæ:* There was more Reaſon that the Subjects Eſtates, than their Perſons, ſhould be in the King's Power, to enable him to defend the Realm.

It had been objected, indeed, that the Writ was againſt the Common Law; becauſe there was no Precedent of a Writ to an Inland County to find a Ship: But there were Precedents of the King's charging the Subject of the Inland Counties towards the Defence of the Kingdom, though not in that Manner, by finding Ships.

That as to the Charters and Statutes which had been cited, to ſhew that the Subjects Goods could not be taken from them, but by Conſent of Parliament; all that could be gathered from them, was, that they ſhould be freed from all *unjuſt Taxations:* They could not intend a Charge for the neceſſary Defence of the Realm. Mr. Juſtice *Crooke*, in reciting the Conqueror's Laws, he obſerved left out this material Clauſe. (*viz.*) *Statuimus & firmiter præcipimus ut omnes liberi homines totius Regni præd' ſint fratres conjurati ad monarchiam noſtram pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendend' & viriliter ſervand', &c.* Where it was apparent they were to defend the Kingdom *pro facultatibus*, as well as *viribus*; and that the Conqueror did not intend to diſcharge any Body from defending the Kingdom in Caſe of Neceſſity: And thoſe Words in *Forteſcue*, importing that the Subject had an abſolute Property in his Goods, intended no more, than that the King could not take them *to his own Uſe*; and that he could not, *for his own Uſe*, lay any Burthen upon the Subject without Conſent of Parliament; but all private Property muſt give way to the publick: Though a Man has a Property in his own Goods, he cannot uſe them to the Detriment of the Commonwealth; he ſhall not ſet Fire to his own Houſe or Goods, that may endanger his Neighbours; nor ſhall he carry his Goods to a foreign Market, to the Prejudice of the Nation: And to remove that ſcandalous Suggeſtion, that the King intended to make a private Advantage of the Money, he ſaid, both he and the Lord Chief Juſtice *Brampſton*, had heard his Majeſty ſolemnly declare, he thought himſelf bound in Conſcience to convert all this to the Uſe it was given for; and, in Fact, the King had every Year expended much more in his Sea Armaments than ever he received by this Contribution. And whereas it had been ſuggeſted, that

though

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though his Majeſty would not charge them, but in Caſes of Neceſſity, yet this might be a Precedent for his Succeſſors to Charge them at Pleaſure; he anſwered, If future Kings ſhould charge them unreaſonably, this would be no Precedent for it, and the Right Uſe of a Thing ought not to be condemned becauſe it might be abuſed.

The Law alſo repoſed as great a Confidence in the King in other Caſes: He might pardon all Offences, but if he ſhould, no Man would be ſafe; he might make Peace and War, by either of which he might undo the Kingdom, and every Man's Liberties and Properties might be loſt in the general Deſtruction, he might bring upon them by theſe means; but it was not to be preſumed, the King would do any thing againſt the publick Good of the Kingdom, and therefore the Law had declared, *The King could do no wrong.*

It had been acknowledged alſo, he obſerved, that in Time of War, when the Courts of Juſtice were ſhut, the King might charge the Subject; but there might be Wars in ſome Parts of the Kingdom when the Courts were open at *Weſtminſter*; and whether the Danger extended to all, or Part, All ought to be charged, as well to the Sea as Land Service, they both made but one Kingdom; and a Danger in Expectancy, he held, was ſufficient to charge the Subject: In 88 the Enemy had been upon them, if the Danger had not been foreſeen by the Queen, and provided againſt.

But farther, If the Subject could be charged only in Parliament, then they made the Parliament, and not the King, Judge of the Neceſſity of a Defence: It would be ridiculous to acknowledge the Power of making a Defence to be in the King, and not allow him the Means to perform it. Acts of Parliament might take away the Flowers and Ornaments of the Crown, but not the Crown itſelf. He held, an Act to bar the Succeſſion would be void, and ſo would an Act, that no Lands ſhould hold of the Crown, or to abſolve the Subjects from their Allegiance, or take away the King's Power of defending his People; in like Manner, an Act, that he ſhould not command his Subjects Perſons and Purſes in order to defend them, would be void: Nor was this properly an Aid impoſed, but a Contribution of King and People; the King was taxed as well as they.

That ſuch Aſſeſſments as theſe had ever been made by Sheriffs, or ſuch as the King thought fit to truſt, and not by Juries: Beſides, the Command was to provide a Ship, and if that had been done there had been no need of an Aſſeſſment; and Mr. *Hampden* had the leaſt Occaſion of any Man in *England* to complain of the Inequality of it. As to the Objection that the Sheriff taxed himſelf in this Caſe, the Juſtices of Peace, in levying Subſidies, aſſeſſed themſelves, and Commiſſioners of Sewers taxed their own Lands; and the Writs for levying the Expences of Knights of the Shire were directed to the Sheriff, who aſſeſſed himſelf; and if a Fine was laid upon a County he aſſeſſed it, and yet was chargeable towards it. As to the commanding ſix and twenty Weeks Pay to be provided, there were Precedents where the Counties had been obliged to pay their Soldiers after they marched out of their Counties. Where the King paid them, it was uſually for foreign Wars, not in Caſes of Neceſſity, when they marched in Defence of the Kingdom; and there was no going out of the Realm here: The Sea and Land made but one Kingdom, as had been reſolved in the *Exchequer*.

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And though it had been objected, that by *Magna Charta* no Freeman could be impriſoned, here was no Impriſonment in Queſtion; nothing but the Aſſeſſment, (*viz.*) Why the Defendant ſhould not pay the Money aſſeſſed, or ſhew Cauſe to the contrary?

Nor was the Objection, that the *Certiorari* was directed to two Sheriffs, the late and the preſent Sheriff, more to the Purpoſe: Nothing was more common; nor was the firſt Writ determined, becauſe the Time mentioned in it for preparing the Ship was not expired; for the Writ was irreturnable, and ſo needed no reviving: And though it was ſaid, it did not appear any Ship was prepared, he anſwered, it was prepared; but if it was not, the Fault was in them who had not paid their Quotas. And the King might well bring this *Scire facias*, as he was intereſted in all Actions for the publick Good, and might recover as in the Caſes of Pontage and Murage; much more, when it was for the Defence of the Realm, though it was not fit it ſhould be expreſſed to be for the King, becauſe it was for the publick Good only. He concluded, that he was of Opinion the Proceedings were according to Law, and that the Defendant ought to be charged with the twenty Shillings aſſeſſed on him.

Judgment for the King.

The Judgment of Sir John Brampſton.

Sir *John Brampſton*, Lord Chief Juſtice of the *King's-Bench*, in delivering his Opinion, ſaid. He conceived, whenever the whole Kingdom was in Danger, his Majeſty might command all his Subjects to join with him in Defence of it: That the Acts of Parliament which had been cited were but declaratory of the Common Law. By the 1 *Edw.* III. *cap.* 5. indeed, it was ſaid, That none ſhould be compelled to go out of their Counties, except in Caſes of Invaſion and Neceſſity, and then it ſhould be done as in Times paſſed; therefore what the Uſage was in Times paſſed, was the Queſtion; and it appeared by the Precedents, where they marched at the King's Charge, it was to a foreign War, or to the ordinary Defence; and there was no doubt but in ſuch Caſes the King had paid the Charge: But he was ſtill of Opinion, that in Caſes of Neceſſity, the Subject might be compelled to ſerve out of the County at his own Charges. That it appeared from *Fitz. Nat. Br.* 28. and in *Calvin's* Caſe, that the King might command his Subjects, on their Allegiance, to go with him, or in his Service, to the Wars, as well

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without the Realm as within. The 7th of *Hen.* IV. ſays, that none ſhall attend the King in his Wars out of the Realm without Wages: But in the Realm they were at his Command, in Times of common Danger without Wages, as appeared by a Multitude of Precedents, which explained the Statutes of *Edw.* III. particularly the Abbot of *Roberts-bridge*'s Caſe was concluſive: And 10 *Edw.* III. *M.* 2. *Fol.* 18. the King commanded by his Writ an hundred Men to be ſent to *Portſmouth*; and they refuſing to march without Pay, the King anſwered, *No Wages were due*; *it was a publick Danger.*

As to that Objection, that there were no Precedents of the Subjects ſerving out of the Realm; He anſwered, The Sea and Land were but one Kingdom; and if formerly the Seamen were content to defend the Coaſts by Sea, in Conſideration the Inland Counties took upon them the Charge of the Land Service; he knew no Reaſon, why they might not be obliged to bear the publick Charge together, in Caſes of Neceſſity. Mr. *Selden* had obſerved in his *Mare clauſum*, That it was the ancient Uſage, to charge both the Inland and Maritime Counties on any great Emergency: And Sir *Edward Coke* admitted, That it could never be the Meaning of the Great Charter, to take away the King's Prerogative and exempt the Subject from the Charge of Defence: And as to that Objection, that a Parliament might have been called, it had been well anſwered, That a timely Preparation muſt be made, when Danger threatened: It might be too late, when the Enemy was at our Doors: The King was Judge of the Danger, and the Subject was bound on his Allegiance, to aſſiſt him in any publick Danger.

The Danger, he acknowledged, muſt be expreſſed in the Writ, and he conceived it was ſufficiently expreſſed; the Words being *pro defenſione Regni, & tuitione maris &c.* Had it been only a Danger from Pirates, an ordinary Danger; then indeed the Defence ought to have been at the King's Charge. As to the Writs, the only Exception he had to them was, that it did not appear, neither in the one or the other, to whom the Money was to be paid: There was no Precedent where Judgment had been given, and not ſaid to whom: He inclined therefore to believe, this was a good Exception; but in all other Points he agreed with the Majority of the Bench.

Doubtful in his Judgment.

In *June* following, *viz.* In *Trinity* Term 14 *Car.* the following Judgment againſt Mr. *Hampden*, was given in the *Exchequer* on the Motion of the Attorney General, *Viz.*

The Entry of the Judgment.

Quod ſeperal' brevia prædict' & retorna eorundem ac ſchedul' prædict' eiſdem annexat' ac materia in eiſdem content' ſufficient' in lege exiſtant' ad præfat' Johannem Hampden de predict' vigint' ſolid' ſuper ipſum in forma & ex cauſa predict' aſſeſſat' onerand' Ideo conſideratum eſt per eoſdem Barones, quod prædict' Johannes Hampden de eiſdem viginti ſolid' oneretur, & inde ſatisfaciet, &c.

Motion in Parliament, to reverſe the Judgment againſt Hampden, *and puniſh the Judges.*

In the Parliament, that was aſſembled the 13th of *April* 1640, Mr. *Waller* moved in the Houſe of Commons, to have this Judgment reverſed, and the Judges puniſhed, for pronouncing it. He was not for entring on the Supply, till this, and their other Grievancies were redreſſed: He ſaid it was neceſſary they ſhould be reſtored to the Property of their Goods (which he apprehended was taken from them by this Judgment) before they could have any thing to give. If the King could tax them at Pleaſure, all they had was the King's already: Adding, that their Liberties were no leſs affected than their Fortunes, by this Judgment; ſince the King was thereby empowered to impriſon their Perſons, for Non-payment of this Tax: Concluding with a Motion, That the Houſe might firſt conſider the reſtoring the Nation to its fundamental and vital Liberties, the Property of their Goods, and Freedom of their Perſons, and then enter upon the Supply: But, this Parliament ſitting but a few Days nothing was done in it.

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The like Motion in the next Parliament.

The Lord *Falkland*, in the Parliament that began *November* 1640. moved the calling the Judges to Account again; obſerving, That as they had allowed the King *the ſole Power in Neceſſity*, and *the ſole Judgment of Neceſſity*, they had enabled him to take from them what he would, when he would, and how he would, and conſequently left them neither Liberties nor Properties; and thus, by the Transformation of them from the State of free Subjects to that of Villains, diſabled them by legal and voluntary Supplies to expreſs their Affections to his Majeſty: They muſt therefore think of taking away this Judgment, and theſe Judges together, and of regulating their Succeſſors, by their exemplary Puniſhment.

Reſolutions againſt Ship-Money.

After many Debates and Invectives againſt the Judges for giving this Judgment in the Caſe of Mr. *Hampden*, the Houſe of Commons reſolved, on the 7th of *December*, that the Charge impoſed on the Subjects, for providing and furniſhing Ships, and the Aſſeſſments for raiſing Money for that Purpoſe, commonly called Ship-money, were againſt the Laws of the Realm, the Subjects Right of Property, and contrary to former Reſolutions in Parliament, and to the Petition of Right. 2. That the extrajudical Opinions of the Judges in the Caſe of Ship-money, were againſt Law; the Liberty and Property of the Subject, contrary to former Reſolutions in Parliament; and to the Petition of Right. 3. That the Writs, called Ship-Writs, were againſt Law, Liberty, and Property, *&c.* and 4. That the Judgment againſt Mr. *Hampden*, in the Matter and Subſtance thereof and the making Mr. *Hampden* chargeable, was againſt Law, Liberty, and Property, *&c.*

Which Reſolutions the Commons communicated to the Lords, at a Conference, by Mr. *St. John*, who made a very long Speech upon the Occaſion: But, as it contained nothing more than is to be found in the Arguments abovementioned, I ſhall not trouble the Reader with it.

Mr. Hyde's *Speech upon impeaching Judge* Berkley.

Mr. *Hyde* (afterwards Lord Chancellor) made a Speech againſt Ship-money, and Ship-Writs, on the carrying up Articles of Impeachment againſt Sir *Robert Berkley*, one of

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of the Juſtices of the *King's-Bench*. Wherein he tells their Lordſhips, That the Judges firſt begun with the countenancing Impoſitions and Taxes on the Merchants in Trade, and, by Burthens and Preſſures on the Gentry, in caſe of Knighthood, before they arrived at that univerſal Deſtruction of the Kingdom by Ship-money, which promiſed them Rewards and Security for all their former Services: By doing the Work of a Parliament, in granting his Majeſty Supplies: (They thought they ſhould never more be called to Account by Parliaments, which they had thus rendered uſeleſs, and might now ſhare the Spoils of their Fellow-Subjects with Impunity.) The Commons, therefore, hoped their Lordſhips would ſpeedily call theſe Judges before them, to anſwer the Articles laid to their Charge, and do Juſtice on them, according to their Demerits.

Theſe Judges were impeached for High Treaſon, and other Miſdemeanors: The Subſtance of the Articles preferred againſt Sir *Robert Berkley* being of the following Tenor.

The Articles againſt Sir Robert Berkley.

1. That the ſaid Sir *Robert Berkley*, being one of the Juſtices of the *King's-Bench*, had traiterouſly endeavoured to ſubvert the fundamental Laws, and eſtabliſhed Government, and to eſtabliſh an arbitrary tyrannical Government, as he had manifeſted by wicked Words, Opinions, Judgments, Practices, and Actions, mentioned in the following Articles.

2. That, whereas by the Statute of 25 *Hen.* VIII. Victuals were appointed to be rated, he had delivered his Opinion, that Corn was ſuch Victual as was intended to have a Price ſet upon it, contrary to the plain Meaning of the ſaid Statute, with an Intent to lay an unlawful Charge on the Subject.

3. That an Information being preferred in the *Star-Chamber* againſt *John Overman*, and fifteen other Soap-makers, for exerciſing their Trade contrary to a Patent, granted for the ſole making of Soap; and their Anſwer being referred to him, and others, he certified to the *Star-Chamber*, that the whole Anſwer, except four Words, and the ten laſt Lines, ought to be expunged: And the Interrogatories and Depoſitions, on the Behalf of the Defendants, being alſo referred to him and others, he certified, that thirty-nine of them ought to be ſuppreſſed: Which Certificates were contrary to Law: And, by Reaſon thereof, the ſaid *John Overman*, and the fifteen other Defendants, were ſentenced by the *Star-Chamber* to be committed to the *Fleet*; diſabled from uſing their Trade; one of them fined 1500*l.* two of them 1000*l.* a-piece, and four of them 1000 Marks a-piece; to the utter Ruin of the Defendants, and to the Overthrow of the free Trade and Liberty of the Subject.

4, and 5. That, being one of the Juſtices of the *King's-Bench*, and ſworn to adminiſter Juſtice according to Law, he had ſubſcribed the ſaid Opinion, declaring the Lawfulneſs of levying Ship-money.

6. That he had delivered his Opinion, againſt *John Hampden* Eſq; in the Caſe of Ship-money, in the *Exchequer* Chamber.

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7. That he declared at the Aſſizes held at *York* in *Lent* 1636. that it was lawful, and an inſeparable Flower of the Crown, for the King to command, not only the Maritime Counties, but alſo thoſe that were Inland, to find Ships for the Defence of the Kingdom; and, that this was the Opinion of all the Judges: And, whereas there was a Rumour, that ſome of them ſubſcribed againſt their Judgment, he ſaid, It was a baſe and unworthy Thing, for any Man to give his Hand contrary to his Heart; wiſhing, for his own Part, that his Hand might rot from his Arm, that was guilty of ſuch a Crime: Notwithſtanding, he knew, that Mr. Juſtice *Hutton*, and Mr. Juſtice *Crooke*, who had ſubſcribed, were of a contrary Opinion, and ſubſcribed but in Conformity to the Majority. And, he, the ſaid Sir *Robert Berkley*, then alſo ſaid, that in ſome Caſes the Judges were above an Act of Parliament, with an Intent to countenance the ſaid unjuſt Opinions, and terrify thoſe who ſhould refuſe to pay Ship-money, or ſeek any Remedy at Law againſt the ſaid unjuſt and illegal Taxation.

8. That *Richard Chambers*, Merchant, bringing an Action againſt Sir *Edward Bromfield*, Lord Mayor of *London*, for impriſoning the ſaid *Chambers*, on his Refuſal to pay Ship-money: Upon a Debate of the ſaid Caſe, in the Court of *King's Bench*, the ſaid Sir *Robert Berkley* ſaid, that there was a rule of Law, and a Rule of Government; and, that many Things which might not be done by the Rule of Law, might be done by the Rule of Government; and would not ſuffer the Legality of Ship-money to be argued: All which Opinions, Declarations, and Speeches, were deſtructive of the fundamental Laws; the Subjects Right of Property; and contrary to former Reſolutions of Parliament; and the Petition of Right.

9. That the ſaid Sir *John Berkley*, being Juſtice of Peace for the County of *Hertford*, did, at the Quarter-Seſſions there, revile and threaten the Grand Jury, for preſenting the Removal of the Communion Table in *All-Saints* Church in *Hertford* out of the Place where it anciently ſtood, and ſetting it Altar-wiſe as an Innovation: And, that he committed *Browne*, one of the moſt active of the ſaid Grand Jury, to Priſon for one Night, declaring, that they had nothing to do to meddle with Church Matters; and compelled the Grand Jury to ſay, they were ſorry for what they had done; cauſing them to tear the ſaid Preſentment in Pieces, and trample it under their Feet: And, by his threatening, reviling Speeches, and unjuſt Actions, he ſo terrified the Jurors in thoſe Parts, that they durſt not preſent any Innovations in Church Matters; And whereas, *Ingram* and *Carter* indicted *Matthew Brook*, Parſon of *Yarmouth*, for refuſing to adminiſter the Sacrament to them, becauſe they would not receive Tickets with their Names in them, the ſaid Sir *Robert Berkley* diſcouraged the Proſecutor's Counſel at the Aſſizes,

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Aſſizes, and over-ruled the Matter of Law, ſo that the Jury found for the ſaid *Brooke*; bound the ſaid *Ingram* to his Good-Behaviour, for proſecuting the ſaid Indictments, and ordered him to pay Coſts; and *Carter* being abſent, he cauſed a *Vacat'* to be entered, and an Attachment againſt the ſaid *Carter*: Which ſaid Proceedings were contrary to Law.

10. That, he refuſed to bail *Alexander Jennings*, and ſeveral others, who were committed for not paying Ship-money; and alſo, refuſed to bail *William Pargiter*, who was committed, for refuſing to pay five Shillings, aſſeſſed on him by a Commiſſion of Array, iſſued when the *Scots* entered *England*: That he had denied Writs of *Habeas Corpus* to ſome; and delayed them, when they were demanded by others; and refuſed to bail ſeveral, though no Cauſe appeared on the Return to hinder it: Which Things were deſtructive to the Laws of this Realm, contrary to former Reſolutions of Parliament, and to the Petition of Right.

11. That he had refuſed to grant Prohibitions to the Eccleſiaſtical Courts, where he ought to have granted them by Law.

All which Words, Opinions, and Actions, were ſo ſpoken and done by him traiterouſly and wickedly, to alienate the Hearts of his Majeſty's Liege People from his Majeſty; to create Diviſions between them, and to ſubvert the fundamental Laws, and eſtabliſhed Government: For which they did impeach the ſaid Sir *Robert Berkley* of High Treaſon againſt his Majeſty, and of the Miſdemeanors aboveſaid; praying, that he might be put to anſwer the Premiſſes, and Juſtice done upon him, *&c.*

The Lords, on the 20th of *January*, 1640-1, reſolved, that the Ship-writs, and the Judges Opinions on them, were contrary to the Laws and Statutes of the Realm; and to the Rights and Properties of the Subject; and to former Judgments of Parliament: And, on the 26th of *February*, they agreed, the ſaid Judgment given in the *Exchequer-Chamber* againſt Mr. *Hampden*, ſhould be vacated.

An Act againſt Ship-money, &c.

An Act alſo paſſed the ſame Seſſion, declaring, That the Charge impoſed on the Subject, for providing and furniſhing of Ships, commonly called Ship-money, and the extrajudicial Opinions of the Juſtices and Barons, and the Writs, and every of them, and, the Agreement, or Opinions, of the greater Part of the Juſtices and Barons, and the Judgment given againſt *John Hampden* Eſq; for the Payment of Ship-money, were contrary to, and againſt, the Laws and Statutes of the Realm; the Right of Property; the Liberty of the Subject; former Reſolutions of Parliament, and the Petition of Right made in the third Year of the King.

The Judgment againſt Hampden, *declared void.*

And that, all and every the Records and Remembrances of the ſaid Judgment, againſt the ſaid *John Hampden*, and all and every the Proceedings whatſoever, upon, or by Colour of, any of the ſaid Ship-writs, ſhould be adjudged utterly void; and that all and every the ſaid Judgment, Enrolment, Entries, Proceedings, and Dependants, of what kind ſoever, ſhould be vacated and cancelled, in ſuch Manner and Form as Records uſed to be vacated.

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Articles preferred againſt ſix more of the Judges.

Articles of Impeachment were carried up alſo againſt ſix more of the Judges. Thoſe againſt Judge *Crawley* particularly, by Mr. *Waller*, on the 6th of *July*, 1641. In which he was charged with the extrajudicial Opinions above ſpecified, and, declaring in his Circuit, That Ship-money was ſo inherent a Right in the Crown, that it was not in the Power of the Parliament to take it away. But the Editor of theſe Proceedings does not give us the particular Articles againſt Judge *Crawley*, or againſt any of the reſt of the Judges; except thoſe againſt Lord *Finch*, which will be found in the Proceedings againſt him in the following Sheets.

A Review of the Proceedings, in the Caſe of Ship-money.

I ſhall in the next Place take a Review of theſe long and intricate Proceedings, and endeavour, in a ſummary way, to ſtate the Arguments on either Side: After which, I ſhall proceed to make ſome Remarks on the whole, as well Hiſtorical as Critical.

Conceſſions of Mr. Hampden's *Counſel,*

It appears, that the Counſel for Mr. *Hampden*, as well as the Judges, who argued on that Side, admitted, that his Majeſty had the ſole Power of the Militia; and, in Caſes of any ſudden Invaſion or Rebellion, might command them, and the reſt of his Subjects, to arm, and march in Defence of the Kingdom; and that his Majeſty was alſo ſole Judge of the Danger: But they denied, that the King could raiſe Money by way of Writ, or otherwiſe, to pay his Forces by Sea or Land, unleſs in a Parliamentary Way.

They inſiſted, that the Tenures by Knights Service, the Service of the Ports, Tonnage and Poundage, were intended to enable the King to defend the Nation: And if an Invaſion or Inſurrection was ſo ſudden and formidable, that the King could not reſiſt them with the Aſſiſtance of theſe; and that there was not Time to aſſemble a Parliament; then they did admit, that the King might command the Aſſiſtance, both of the Perſons and Eſtates of his Subjects, to ſave the Kingdom from ſuch apparent and imminent Danger: Adding that, in caſe of ſuch ſudden Danger, every Subject, as well as the King, might and would make uſe of the Goods and Property of one another, as well as his own, towards the Common Defence: And even By-Laws for the Common Defence, were good in ſuch Caſes, which were not warranted by Royal Authority.

The Arguments for Mr. Hampden *ſummed up.*

But that if the King was empowered to tax his Subjects at Pleaſure, whenever he pleaſed to declare the Kingdom was in Danger, the Conſequence would be as miſchievous as an Inſurrection or Invaſion could be; for, this way, they might loſe the Property of their Lands and Goods, as well as by the other; the King, by the ſame Rule he took Part, might take the Whole, under a Pretence of Danger or Neceſſity.

They endeavoured to ſhew alſo, that whenever the Militia, or any of the King's Subjects were commanded to march out of their reſpective Counties, it was always at the King's Charge; and there was no Precedent of an Inland County's being commanded to provide a Ship

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a Ship for the Defence of the Sea: That Parliaments were held anciently twice a Year, or once at leaſt; and theſe great Councils would never fail to grant Supplies, where there was a real Neceſſity for it; and that that there was Time enough for aſſembling a Parliament in this Caſe, the Rendezvous of the Fleet being appointed ſeven Months after the Teſte of the Writs.

It was urged alſo, that the firſt Writ of the 4th of *Auguſt* did not declare any other Danger than what was to be apprehended from Pirates, and that the ordinary Guard of the Sea was ſufficient to ſuppreſs theſe: There could be no Occaſion to tax the Inland Counties towards it, and the Writ of *Mittimus*, that was iſſued a Year and a half after, declaring the Kingdom was in Danger, was not to be conſidered in this Caſe; for if there was no Danger expreſſed in the firſt Writ, there was no Reaſon *then* for levying ſuch an extraordinary Tax; the Subject could not foreſee what would be declared a Year and a half afterwards, and the Danger conſequently was not confeſſed by the Demurrer. The Command to the Sheriff to aſſeſs the County was alſo held to be illegal: It ought to have been done by a Jury; and it was ſtill more improper to levy the Money by *Scire facias*, when the Writ directed it to be levied by Diſtreſs or Impriſonment: Though the giving the Sheriff a Power to impriſon the Subject, and ſell his Goods for Non-payment, were alſo contrary to the Statutes, which confirmed the Property of the Subject in his Goods. That the directing the *Scire facias* to the late Sheriff, as well as the preſent Sheriff, alſo was irregular; and the not ſaying to whom the Money was to be paid, was ſuch an Error as could not be got over. And, laſtly, they obſerved, that it was agreed on all Hands, that if the Money had been made payable to the King's Uſe, and not for the common Defence, it was unwarrantable.

The Arguments for the King ſummed up.

On the other Hand, thoſe who argued for the King anſwered, That the Tenures by Knights Service, the Service of the Ports, Tonnage and Poundage, *&c.* were reſerved only for the Support of the Government, and the ordinary Defence of the Kingdom. Every one knew that theſe were not ſufficient for the Defence of the Kingdom, in Time of War and imminent Danger; and if they were not, the Subject was obliged to Contribute further, rather than the Kingdom ſhould be loſt: That the Defendant's Counſel had confeſſed the Danger, by their Demurrer, and had acknowledged alſo, that, in Time of common Danger, private Property muſt ceaſe: That ſince *Magna Charta*, and the other Acts made for the Security of the Subject's Property, Writs and Commiſſions had frequently been iſſued, requiring the Subject to provide for the Defence of the Kingdom by Sea and Land, at their own Charge; and even ſo lately as the Reigns of Queen *Mary* and Queen *Elizabeth*, on the Siege of *Calais*, and at the *Spaniſh* Invaſion in 1588, to which the Subject cheerfully contributed without murmuring; and conſequently the Statutes, which ſecured the Subject's Property, could never intend that he ſhould not be obliged to contribute to the Defence of the Kingdom in Caſe of imminent Danger: That ſuch Writs had been iſſued even during a Seſſions of Parliament, where Subſidies were given; and that it was in the King's Option, whether he would call a Parliament or not: It was a good way of raiſing Supplies by Parliament, but this was not the only way: Queen *Elizabeth*, though ſhe had a Year's Notice of the *Spaniards* Intentions againſt the Kingdom, called no Parliament, but raiſed Men and Money by an Order of Council only; which was ſo far from being diſapproved of in the next Parliament, that ſhe received their Thanks for her provident Care and Circumſpection. That it was true a Parliament might have been called by his Majeſty; but he was too well acquainted with the Delays in their Proceedings, and the Temper they had ſhewn, to rely on their giving him Supplies; and therefore, rather than hazard the Security of the Kingdom, and the Loſs of the Dominion of the Sea, he had followed the Steps of his Predeceſſors, in providing againſt the Danger, without having Recourſe to a Parliament.

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The King was ſtill truſted with the walling of Towns for their Defence, and could impoſe a Tax for it, as was acknowledged by the other Side; and it was much more reaſonable he ſhould be entruſted with a Power of compelling the Subject to contribute towards the fitting out Ships, which were, in reality the Walls of the Kingdom.

That if the Danger was not confeſſed by the Defendant's Demurrer, there appeared ſufficient Danger in the firſt Writ, of the 4th of *Auguſt*, to warrant ſuch Preparations; for the Writ took notice of the Dangers ariſing from the neighbouring Powers, who had aſſembled great Fleets and Armies, and expreſſed the Danger there was of loſing the Dominion of the Sea, which, as we were an Iſland, and depended very much on our Trade, muſt be fatal to us. That former Kings, eſpecially during the Time of the *Saxons*, had always endeavoured to keep ſuch Fleets as might render them Maſters at Sea: King *Edgar* had a Navy of 3600 Ships, and commanded 3000 Ships to Rendezvous every Year at *Eaſter*, and ſurround the Iſland. And *Ethelred* commanded every 310 Hides of Land throughout *England* to provide a Ship; which, it was computed, muſt raiſe upwards of eleven thouſand Ships. Of ſuch Conſequence the Dominion of the Sea was thought in thoſe Days; and it was not leſs at preſent, when our foreign Trade was ſo much encreaſed, and other Nations attempted to rival us in it.

That it was not to be preſumed, the King would declare a Danger, where there was none: He was to get nothing by the Aſſeſſment: It was all to go towards the Charge of fitting out Ships, and he was at a great Charge

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himſelf in fitting out a Royal Fleet beſides: That it was acknowledged he was entruſted with greater Matters than theſe; that he could command the Perſons of his Subjects in the Wars; that he could lay an Embargo upon all Ships, and command them into his Service; and had the Prerogatives of War and Peace, whereby he might bring Deſtruction on the whole Kingdom: But it was not to be preſumed he would, any more than that he would ſeize on all his Subjects Eſtates, becauſe he laid a trifling Charge on them, towards their common Defence; and if his Succeſſors ſhould hereafter lay unreaſonable Charges on their Subjects when there was no Neceſſity, this would not be a Precedent for it: Such unneceſſary Charges were acknowledged to be illegal.

And as to the taxing Inland Counties, they all conſtituted but one Kingdom; and it appeared every Hide of Land in the Kingdom had been taxed towards fitting out a Royal Fleet; and if the whole might be charged together, every County in particular might be charged towards it. Formerly the Maritime Counties undertook the Sea Service uſually, and the Militia of the Inland Counties marched to defend the Sea Coaſts; and if both the Inland and Maritime Counties were now charged together, towards the Defence of the whole Kingdom; this was as reaſonable as the charging the one with the Guard of the Sea, and the other with the Defence of their Country by Land.

That the Statutes made againſt taxing the Subject, muſt be underſtood of the ordinary Defence, or for foreign Wars: If an Act was made that the King ſhould not defend the Kingdom, in expreſs Words, or that the Subjects ſhould not contribute to their own Defence in Times of Danger, it would be a void Act. It was not to be ſuppoſed that any Laws could intend the Ruin of the Nation they were made to preſerve, and make the Subject acceſſary to his own Deſtruction; as ſuch Laws would be.

That it was abſurd to ſay, that the King alone was entruſted with the Militia, and the Defence of the Kingdom, and yet was deprived of the Means of raiſing Forces by Sea and Land; and if no Supplies could be raiſed but in Parliament, then the Parliament only was Judge of the Danger, and of the Neceſſity of the Defence: The King had nothing to do with it; ſince, if his Judgment was never ſo much relied on, or his Right to command the Militia never ſo often acknowledged, it would be impoſſible for him to raiſe or maintain Forces without Money. And, laſtly, they held, that the Writs were not defective, either as to Matter or Form; but ſuch as had been uſally iſſued in the like Caſes.

Remarks on the Whole.

In moſt Diſputes both Parties are frequently in the wrong, in ſome inſtance or other, and both of them have often other Views than what they think fit to communicate to the World, or to one another. I look upon this, in Reality, to be a Trial of Skill between the Crown and a Faction. The King deſired no more than to preſerve thoſe Prerogatives that deſcended to him from his Anceſtors, though, it is very poſſible, he might think them more extenſive than they really were. The Faction, on the other hand, were aiming (it is evident from the Rebellion that ſucceeded) to make the King dependant on them, and indeed, to uſurp Sovereign Power, and ſubvert the Government in Church and State; but induſtriouſly concealed their Views, from the honeſt and diſintereſted Part of the Nation, pretending to be the great Patriots and Defenders of the People, againſt Popery and Arbitrary Power; which they had the Addreſs to inſinuate was breaking in upon them like a Flood. The King's Inclinations to Popery, they pleaded, were manifeſt from his marrying a Papiſt, ſuffering her Prieſts and Officers about the Court, and encouraging and preferring thoſe who maintained, that Man was a free Agent, which they ſtiled *Arminianiſm*, and perſuaded the People, it was a Popiſh Tenet: And indeed Epiſcopacy itſelf, was looked upon by many of the Puritan Strain, as a Remnant of Popery; and his Majeſty's encouraging the Eſtabliſhed Church, an Evidence of his Intentions to bring in Popery.

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And as to arbitrary Power, they inſtanced in the many extraordinary Ways the King had taken to raiſe Money, ſince his Acceſſion to the Crown; which were ſuch, indeed, as nothing but an abſolute Neceſſity could juſtify: But what Choice has a Prince left, after repeated Trials of his People's Duty in Parliament, and they peremptorily refuſe him Supplies, either for the neceſſary Support of his Houſhold, or the Defence of his Kingdom? Is he to throw up the Government, and abdicate his Throne, or endeavour to ſupport that, and his own Rights, by having Recourſe to extraordinary Means, till the People's Eyes are opened, and they are brought to a better Temper?

The King, it is evident, by calling three Parliaments, in the firſt four Years of his Reign, had much rather have received Supplies, in a Parliamentary Way, than any other: Nay, he would never have taken *any* other; if he had not been aſſured the Parliament would grant him none: Till he ſaw them ſo infatuated and influenced by the Artifices of the Faction, that nothing leſs would content them, than the deſpoiling him of all his Prerogatives, and ſacrificing the Conſtitution, both Civil and Eccleſiaſtical, to their Fury. The Faction were ſo ſucceſsful, indeed, as to make the People believe, that the King choſe thoſe extraordinary Ways of raiſing Money, and that they proceeded from an innate Diſpoſition to render himſelf Arbitrary: Whereas it was, in Reality, the repeated Provocations he met with, at the beginning of his Reign, before they could ſee what his Adminiſtration would be, that reduced him to the Neceſſity of entring upon thoſe Meaſures: They were ſo far from giving him Supplies for the Support of the War they had drawn the Crown into, that they would not grant him the Cuſtoms his Anceſtors had enjoyed for many Generations for the ordinary Support of the Government. And it is but too manifeſt, that Abundance of Gentlemen, who were Friends both to the Monarchy and the eſtabliſhed Religion,

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gion, did not in Time reflect, that it was the Undutifulneſs of the Commons, that forced the King into thoſe Meaſures in his own Defence. They fixed their Eyes upon every Stretch of the Prerogative, and dwelt upon the Methods that were revived for raiſing Money; not diſcerning the Faction, to throw all into Confuſion, in order to accompliſh their own ambitious Projects, to gratify their Revenge, or ſubvert the eſtabliſh'd Church: Whereas, had the Parliament made the King once eaſy in his Circumſtances, there is no doubt (as he is acknowledged by moſt Men to have been a wiſe, juſt, and virtuous Prince,) he would, at firſt, have given them any Security for their Liberties and Properties they could have demanded. There were ſome falſe Friends alſo, and thoſe in the greateſt Poſts at Court, it appears, that miſrepreſented his Majeſty to the People, and the People to him, or the Breach had ſoon been made up: It is evident, many Gentlemen, abuſed by the ſpecious Pretences of the Faction, endeavoured, for ſome Time, to depreſs the Crown, and bore a part in the general Cry of Grievances, that repented of their Conduct, when it was too late; went over to the King, and laid down their Lives to reſcue the Crown, and the Conſtitution out of the Hands of its Enemies, who, if they had ſeen their Miſtake ſooner, might have prevented the Confuſion that followed.

Give me leave to obſerve further, That if Neceſſity would have rendered Ship-money legal, there was certainly, at that Time too much Neceſſity for that, or ſome other, Supply, to aſſert our Dominion of the Sea: The *Dutch* had a little before barbarouſly diſpoſſeſſed the *Engliſh* of the *Spice Iſlands*; tortured and murdered our Factors at *Amboyna*, in the *Eaſt-Indies*; ſeized their Effects, and taken the Company's Ships, though we were then in full Peace with that State: Our Merchants murmured that the *Dutch* were not yet called to Account, and made to reſtore the only valuable Branch of the *India* Trade, which they had thus robbed us of; and the *Hollanders* very well knew the King did not want Inclination to do the Nation Juſtice in this particular: They increaſed and ſtrengthened their Navy therefore, and entered into a Confederacy with *France* to deprive us of the Dominion of the Sea; and thus ſtrengthened and ſupported, they ventured to inſult the Coaſt of *England*, claiming a Right of fiſhing here, without our Leave; which was the true Reaſon of the King's fitting out the Grand Fleet at this Time, which had ſo good an Effect, that the *Dutch* were compelled to acknowledge our Sovereignty of the Seas, and yield to pay his Majeſty 30000 *l.* a Year by way of Tribute, or as a Conſideration for their fiſhing on our Coaſts; and he might have obliged them to reſtore the Spice Iſlands, if that crafty People had not joined the diſſaffected here, and found him other Employment at home. From whence it appears that Ship-money was exceedingly well employed, how illegally ſoever it was raiſed; and it coſt the King twice the Money he received by it, to fit out thoſe Fleets that did this Service: So that the Nation was very far from being injured by that trifling Tax, which did not bring in much more than two hundred thouſand Pounds *per Annum*, and which would have been eſteemed as inconſiderable, as in Truth it was, if the Faction had not diſtracted the People with imaginary Fears, and inſinuated that the King had further Views, intending to render all their Properties precarious, and govern by Will and Pleaſure.

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Nor was the King only diſtreſſed by the Faction at home and the *Dutch*; but the *Scots* were now upon the Point of throwing off their Allegiance, and breaking out into Rebellion, confederating themſelves with the *Engliſh* Malcontents, the *Dutch*, and *French*, againſt their Native Sovereign. His Majeſty, however, might have ſupported himſelf againſt all theſe, if he had not been ſurrounded by the moſt exquiſite Set of Hypocrites that ever appeared upon the Face of the Earth, who betrayed his Councils while he was heaping Favours upon them.

As to the Judges who gave their Opinions in this great Cauſe of Ship-money; the Lord Chief Juſtice *Finch* fled from the Fury of the Faction into *Holland*, in the Year 1640. when he found there was no Safety for thoſe that durſt be loyal; and was impeached, as will be ſeen hereafter. Six more of the Judges were impeached alſo; but, notwithſtanding the Faction repreſented them as Men not worthy to live, they contented themſelves with extorting fifty or threeſcore thouſand Pounds from them, towards carrying on the Rebellion they had been ſo long plotting againſt their Sovereign; while others were permitted to hold their Places on Condition of doing their dirty Work, and aſſiſting in the Oppreſſion of their Fellow Subjects: It was one of the Maſter-pieces of the Malcontents, to keep Men under the Terror of being declared Delinquents, to ſerve the Ends of them: This they frequently found of greater Advantage to their Cauſe than turning them out of their Offices, or expelling them the Houſe, as the noble Hiſtorian informs us: And, if the King had raiſed ſome trifling Sums, by extraordinary Means, the Faction raiſed a hundred Times more, by Ways and Means that were ſtill more extraordinary, invading the Subjects Liberties and Properties by wholeſale, and exerciſing every Artifice they could invent, to extort Money from the unhappy People they had deluded. It has been ſhewn already, that there was not one of thoſe extraordinary Ways King *Charles* made uſe of to raiſe Money, which had not been practiſed by his Predeceſſors, and for the Legality whereof he had not the Opinions of the Judges: And that Queen *Elizabeth*, in many other Inſtances, carried the Prerogative much higher than this King did, notwithſtanding what *Rapin* and his Fanatick Brethren, in their abundant Wiſdom, have aſſerted to the contrary. Thoſe, who are converſant in the Hiſtory of that Reign, know that ſhe would not ſuffer the Commons to enter into any Debates without her Direction concerning Religion, the Prerogative, or the Succeſſion of the Crown, and, if

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if they were ſo hardy as to attempt it, ſhe committed the Members; that when Sir *Edward Coke*, the Speaker of the Commons, was directed to read a Bill that touched upon one of theſe Articles, he anſwered he durſt not; the Queen had commanded the Contrary; and he accordingly refuſed to read it.

It appears alſo, that Queen *Elizabeth* granted above forty Patents for Monopolies, which were all in Force at one Time; and ſome of them of thirty Years Continuance: That ſhe raiſed Money by Loans, Privy-Seals, and moſt of the other Ways ſo much clamoured againſt in the Reign of King *Charles:* That ſhe preſſed what Soldiers ſhe pleaſed into her Service; compelled the Country to raiſe great Bodies of Horſe and Foot, and to pay and clothe them at their own Expence, without asking the Advice of her Parliament; and was, notwithſtanding, acknowledged to be one of the beſt and greateſt of our Princes; And yet King *Charles*, who did not half this, is charged by the Faction with aſſuming arbitrary Power, and deemed to have forfeited his Crown, though he redreſſed all their real and pretended Grievances; parted with many of his undoubted Prerogatives, and paſſed more Acts for ſecuring the Liberties and Properties of his Subjects than had been paſſed in any Reign ſince the Conqueſt; inſomuch, that the very Parliament, that raiſed the Rebellion againſt him, once confeſſed, they had nothing more to demand for their Security.

It appears that the reſpective Parties in thoſe Days, as in ours, acted upon very different Principles, and were far from being agreed in Facts: The one looked upon the People, and the other on the Prince, as the Original of all lawful Power. The firſt held that every legal Government was conſtituted in the Univerſal Conſent of the People; that no one had a Right to aſſume any Dominion over another without his Leave; and that Monarchs and Magiſtrates were, or at leaſt ought to be, no more than the People's Officers and Subſtitutes, elected by them, to adminiſter Juſtice at home, or command the Armies in the Field, and were liable to be called to an Account and depoſed, whenever their Adminiſtration did not pleaſe their Maſters. 1637. 13. Car. I.

The other Party held, that in the Beginning the Patriarchal Form of Government obtained in every Part of the World; that Fathers were Monarchs in their reſpective Families, and by Nature were entitled to the Command of all their Deſcendants: That there never was a Time when Men were born under no Form of Government, and left at Liberty to chuſe their own Governors: That the greater Monarchies conſiſted of Families that united for their common Defence; or were founded in Conqueſt, ſome powerful Chief reducing his weaker Neighbours under his Power.

And from theſe ſeveral Principles and Notions of Government, the one were for reducing their King to the Condition of a Subject, and the other for maintaining his Prerogative; though the latter held alſo, that the King ought to govern according to ſuch Laws and Statutes as had been granted, or enacted by his Predeceſſors.

The one looked upon the King's Prerogatives only as Conceſſions of the People, and conferred on him for the publick Good; while the other held, our Princes were originally abſolute, limited by no Laws whatever; and that the Laws and Statutes of the Realm were only Grants that our Kings conſented to, at the Inſtance of their People; Or, in few Words, the one were for eſtabliſhing a Republican Form of Government, and the other for ſupporting the Monarchy. The latter were much the moſt numerous, and would have carried their Point, if the Republicans had not been ſupported by their Brethren of *Scotland* and *Holland*, who agreed exactly, both in Principles of Religion and Government, with our Malecontents at home. The *Dutch* and the *French* had alſo their Ends to ſerve, in fomenting our Diviſions; and all together found Means to ſubvert our ancient Form of Government, though there were not One in Ten, of the *Engliſh* Nation, Enemies to Monarchy in thoſe Days, any more than they are at preſent.

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The Trial of JOHN LILBURN and JOHN WHARTON, for *printing and publiſhing ſeditious Books*, before the Court of *Star-Chamber*, 9 *Feb.* 1637. 13 *Car.* I.

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Lilburn's *Proſecution.*

Scarce any Appearance of a Trial.

I Am aſhamed to find between twenty and thirty Pages in Folio of ſuch wretched Stuff bound up with the State Trials. This ſeems to have been done purely to encreaſe the Bulk, and inhance the Price, of a Work too voluminous already; therefore I ſhall reduce theſe Proceedings into a very narrow Compaſs. The Editor indeed, is ſo good to tell us this Piece was written by Enthuſiaſtick John *himſelf; but, if he had not, it is impoſſible any one could have thought otherwiſe.*

Lilburn's *own Account of his Proſecution.*

John relates, that he was betrayed into a Meſſenger's Hands by a pretended Friend of his: That he was committed to the *Gate-houſe*, and then removed to the *Fleet:* That being brought before the Attorney-General, he was examined concerning his importing ſome of Doctor *Baſtwick*'s ſeditious Books from *Holland*, of which one *Chillington* had accuſed him; and that he had a great deal of idle Diſcourſe afterwards with the Attorney's Clerk, who would have examined him about other Matters, foreign to the Purpoſe, but he refuſed to anſwer any further, or to ſet his Hand to what he had ſaid and thereupon was remanded to the *Fleet.*

About

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About ten Days after he was brought to the *Star-Chamber* Office, to enter his Appearance, and to be examined again; and required to take on Oath, *That he ſhould true Anſwer make to all things that were demanded of him*; which he refuſed to take, or to pay the Fees for entering his Appearance: whereupon he was remanded to the *Fleet* again.

That he was afterwards had before the Court of *Star-Chamber*, and charged with refuſing to enter his Appearance, or take the *Star Chamber* Oath: And the Affidavit of *Edmund Chillington* was read againſt him, and his Fellow-Priſoner, *John Wharton*; importing, that they had printed, at *Rotterdam* in *Holland*, Doctor *Baſtwick*'s Anſwer, his Litany, and divers other ſcandalous Books, and conveyed them over to *England*. Then he was urged to take the Oath again; but he refuſed it, as an unlawful Oath. Old *Wharton*, his Fellow-Priſoner, alſo refuſed the Oath, exclaiming againſt the Cruelty of the Biſhops, and telling the Court they had five Times ſent him to Priſon, within two Years, for refuſing the like Oath: Then they were both committed to the *Fleet* again for their Contempt.

Both of them being brought before the *Star-Chamber* three or four Days after, they refuſed ſtill to take the Oath; and another Affidavit was read againſt them, importing, That they had ſent over ſeveral more ſeditious and libellous Books from *Holland*; which the Priſoners, denyed, but would not ſwear it, and *Wharton* began to revile and rail at the Biſhops, both of them aſcribing this Proſecution to Epiſcopal Influence. Whereupon the Court proceeded to cenſure the Priſoners, and adjudged, That they ſhould be remanded to the Fleet, there to remain till they conformed themſelves to the Orders of the Court; that they ſhould, each of them, pay a Fine of 500*l.* and give Security for their good Behaviour before they were enlarged; that *Lilburn* ſhould be whipped from the *Fleet* to the Pillory; and that both of them ſhould be ſet in the Pillory, in ſuch Place as the Court ſhould direct, (which was afterwards ordered to be in *New-Palace-Yard*, *Weſtminſter*.)

Sentence againſt the Priſoners for their Contempt, in not anſwering the Court &c.

Lilburn (according to his Sentence) ſays, he was whipped on the 18th of *April*, (being faſtned to a Cart) from the *Fleet* to *Palace-Yard*; and the Lords of the *Star-Chamber*, being then ſitting, ſent their Tipſtaff to him, to know if he would yet ſubmit; but he refuſed and gloried in his Sufferings: Whereupon he was ſet in the Pillory for two Hours; where he gave the People an Account of his Suffering and the Hardſhip of his Caſe, applauding thoſe three living Martyrs, as he called them, *Burton*, *Prynne*, and *Baſtwick*, reviling the Biſhops, and telling the People they received their Power from the Devil, inſtead of having it from God, as they pretended; and that there was little or no Difference between Popery and the Church of *England*; and exhorted the People to withdraw their Necks from under that ſpiritual and Antichriſtian Bondage; that they ſhould put on couragious Reſolutions, like valiant Soldiers of *Jeſus Chriſt*, and fight manfully his ſpiritual Battles. For his own Part, he ſaid, his Soul was filled ſo full of ſpiritual and heavenly Joy, while he ſtood in the Pillory, that he could not expreſs it with his Tongue. Then he took ſome of *Baſtwick*'s Libels out of his Pocket, and threw them among the People; which the Court of *Star-Chamber*, that was ſitting in View of the Pillory, being acquainted with, ſent their Officers to order him to behave himſelf with more Decency, and ceaſe his Railing; but he anſwered, he would declare his Mind, if they hanged him up at the Hall Gate: Whereupon they ordered him to be gagged, which put an End to his ſeditious Harangue for the preſent; but being taken down from the Pillory and ungagged, he began again, and told the People, he was *more than Conqueror through him that loved him.* And ſuch was his Behaviour during the whole Time he was in the Hands of the Executioner, that the Court of *Star-Chamber* ordered him to be laid in Irons, and kept on the Common Side in the *Fleet* Priſon; where, he tells us, he ſhould have been ſtarved, if he had not been relieved by his Fellow-Priſoners, for his Friends were not ſuffered to come at him; and that the Hardſhips he underwent in Priſon twice threw him into a Fever, and endangered his Life.

Lilburn *whipped and pillored.*

He exclaims againſt the Biſhops and the Church of England.

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Encourages Diviſions.

Diſperſes ſeditious Libels, while he ſtood in the Pillory

This Man having done as much towards ſpiriting up the People to rebel againſt the Government, as any one of his Station, Reparation was ordered to be made him, for his Sufferings and Services, by the Parliament in 1641, on his Petition; and he was afterwards ordered three thouſand Pounds out of the Royaliſts Eſtates, that were confiſcated by the *Rump:* But he complains he never received but little of it, though he liſted himſelf in the Rebels Army, and behaved ſo well, that he was advanced to the Poſt of Lieutenant-Colonel of Dragoons. The Truth is, he grew as unquiet and mutinous under the Uſurpation, as he ever had been under his lawful Prince, and was proſecuted by the Saints, his Brethren, with more Violence than ever he was by the *Star-Chamber*, or the Biſhops, as is evident from ſome of the ſucceeding Trials.

Remarks on Lilburn's *Proſecution.*

It ſeems the Saints of thoſe Days thought it their Duty to oppoſe and revile their Governors in Church and State; and, in any other Country but this, *Lilburn* would have been hanged, for flying in the Face of Authority, and inciting the People to Rebellion, even while he was under the Hand of the Executioner.

1638. 14 Car. I.

Harriſon's *Trial.*

The Trial of THOMAS HARRISON, of *Creek*, in the County of *Northampton*, Clerk, for a *Contempt in inſulting and ſlandering Mr. Juſtice* HUTTON, *one of the Judges of the* Common-Pleas, *as he ſat upon the Bench in* Weſtminſter-Hall. Before the Court of *King's-Bench*, in *Trinity* Term. 1638. 14 *Car.* I.

1638. 14 Car. I.

The Indictment.

THE Indictment was found by a grand Jury of *Middleſex*, and ſet forth that the Court of *Common-Pleas* was an ancient Court, and Mr. Juſtice *Hutton* one of the Judges thereof; and that the Defendant, *Thomas Harriſon*, being moved by Malice, and intending to bring the ſaid Mr. Juſtice *Hutton* under His Majeſty's high Diſpleaſure, to the Hazard of his Life and Eſtate, and intending to diſturb the Peace of the Kingdom, and the Courts of Juſtice then ſitting; did, on the 4th of *May*, then laſt paſt, audaciouſly and maliciouſly ruſh to the Bar of the ſaid Court of *Common-Pleas*, the ſaid Mr. Juſtice *Hutton*, and Mr. Juſtice *Crawley*, then ſitting on the Bench; and, with a loud Voice, ſaid, *I do accuſe Mr. Juſtice* Hutton *of High-Treaſon*, in contempt of His Majeſty, his Crown, and Dignity, and of the Courts of Juſtice then ſitting in *Weſtminſter-Hall*, *&c.*

His Confeſſion.

The Evidence produced againſt the Defendant, was his own Examination and Confeſſion under his Hand, which he acknowledged to be true in open Court: In which Examination he confeſſed, That he came to the Bar of the Court of *Common-Pleas*, and there publickly charged Mr. Juſtice *Hutton* with High-Treaſon, with denying the King's Supremacy, and with moving the People to Sedition; and being asked the Reaſon of this Charge, he anſwered, That according to common Fame, the ſaid Judge on the *Saturday* preceding, had delivered his Opinion in the Exchequer-Chamber, *That the King had no lawful Power to levy Ship-Money*, and that the People thereupon grew more ſtubborn and averſe to the Payment of Ship-Money, and that this Judge's Opinion was contrary to the Opinion of all the Orthodox Divines in the Kingdom: That the ſaid Mr. Juſtice *Hutton* had in his Circuit encouraged the People in their Diſobedience; and being ask'd why he made choice of this publick Way of charging the Judge, he anſwer'd becauſe he delivered his Opinion publickly.

The Offence contained in the Indictment being thus confeſs'd, in the Examination, which the Defendant acknowledged in Court to be true, and there needing no farther Evidence; the Attorney-General, after he had enlarged on the Henioufneſs of the Crime, demanded Judgment againſt him, and the following Sentence was pronounced, *viz.*

Sentence againſt him. The Fine ſhould be only 5000 *l.*

That the Defendant ſhould pay a Fine of 50000 *l. be impriſoned during the King's Pleaſure; and, with a Paper on his Forehead expreſſing his Offence, ſhould go to all the Courts in* Weſtminſter-Hall, *and make his Submiſſion in every Court.*

Remarks on Harriſon's Trial.

From this Proceeding we may gather how violently the two great Parties in the Nation were ſet againſt each other at this time, and that the Clergy were generally on the Side of the Court. It was certainly a very great Offence to charge a Judge upon the Bench with High-Treaſon, eſpecially when there was no other Foundation for it, but his differing in Opinion from his Brethren in the Caſe of Ship-money: But, on the other hand, conſidering the Defendant was but a private Clergyman, and acknowledged his Offence, the Fine ſeems very exorbitant. The Editor of this Collection of Trials, has made it fifty thouſand Pounds; but looking into *Croke's* Reports, I find he has ſet down forty five thouſand Pounds too much. However, five thouſand Pounds was much more than the Defendant would ever be ſuppoſed able to pay, and conſequently was contrary to *Magna Charta*, as the Party that proſecuted him uſed to urge, when it was the Fortune of any of their Brethren to be charged with ſuch heavy Fines.

1640. 16 Car. I.

The Proſecution of JOHN Lord FINCH, Baron of *Fordwich*, and Lord Keeper of the Great Seal, for *High-Treaſon*, 1640 16 *Car.* I.

1640. 16 Car. I.

Lord Finch's *Proſecution.*

A Committee of the Houſe of Commons being appointed to prepare a Charge againſt the Lord Keeper *Finch*, on the 14th of *December*,

He deſires to be heard by the Houſe of Commons.

he deſired to be heard by that Houſe, before they came to any Reſolution againſt him, which was granted; and on the 21ſt of the ſame Month, the L. Keeper came to the Houſe, where a Chair was ſet for him, and a Stool to lay the Purſe on within the Bar. However, he would not ſit down, or put on his Hat, as the Speaker deſired him; but laying the Purſe on the Chair, he made a Speech ſtanding bareheaded all the time, the Serjeant at Arms of the Houſe ſtanding on one Side of him, with his Mace upon his Shoulder.

The

1640. 16 Car. I.

His Speech to the Houſe..

The Lord Keeper firſt thanked the Houſe for the Favour of hearing him; which he did not deſire, he ſaid, to preſerve himſelf or his Fortune, but to preſerve the good Opinion of that Aſſembly, which he valued more than all the Honours and Fortunes he was capable of: Neither did he come thither to juſtify his Actions or Opinions, but to give a plain Narrative of his Caſe, and ſubmit it to the Wiſdom and Juſtice of the Houſe.

His Affection for Religion he hoped no Man doubted of, having lived near thirty Years in the Society of *Gray's Inn*, and his Education and Converſation ſo very well known to many of them: And tho' he had been fifteen Years of the King's Council, no Man could charge him with being the Author or Adviſer, or even of conſenting to any one Project. That his Majeſty had, indeed undeſervedly, preferred him to two great Poſts, that of Lord Chief Juſtice of the *Common Pleas*, and that of Keeper of his great Seal; but without his ſeeking, and how he had incurred the Diſpleaſure of that Houſe, he could not conceive; but hoped he ſhould manifeſt his Innocence to their Satisfaction.

He had once the Honour, (he obſerved) of ſitting in that Place where Mr. Speaker did; and appealed to all that knew him, if he had not ſerved the Houſe with Candour, and received Teſtimonies of their Affection for him; and the laſt unhappy Day he ſat there, he had a great Share, he ſaid, in the Unhappineſs of it. Many of the Members could witneſs that no Man within thoſe Walls, expreſſed more Symptoms of Sorrow, Grief, and Diſtraction, than he did.

That his Majeſty commanded him to deliver his Pleaſure to the Houſe, that they ſhould adjourn; and, that upon his Allegiance, he ſhould not put any Queſtions that ſhould be propoſed; but, upon the Delivery of the Meſſage, returned to him again: And he humbly beſought them to conſider, if it had been any other Man's Caſe, what he could have done between the Diſpleaſure of a gracious King, and the ill Opinion of that honourable Aſſembly. As for his Part, he only acted according to the Commiſſion he received from His Majeſty. He was not the Author of that Council: On the contrary, he reaſoned with His Majeſty, and would gladly have been excus'd from executing that ungrateful Office, deſiring they would lay all his Actions together from firſt to laſt, and he ſhould ſubmit them to their favourable Conſtruction. That as to the Writs for Ship-money, he was as ignorant of the iſſuing them, as any Member of that Houſe. He was neither the Author or Adviſer of them and they were even iſſued without his Privity.

That the Precedents for iſſuing them were, indeed, brought to the Lord Chief Juſtice of the *King's-Bench*, to the chief Baron and himſelf, to peruſe; which they did, and returned them. That after this, His Majeſty demanded of them, *Whether, when the whole Kingdom was in Danger, and the Kingdom in general concerned, it were not according to Law and Reaſon, that the whole Kingdom ſhould join in Defence thereof?*

That in *Michaelmas* Term, 1634, His Majeſty required him to demand the Opinion of every Judge in particular, and Charge them upon their Allegiance, to keep it ſecret; aſſuring them, that theſe Opinions ſhould not be binding, either to themſelves or the reſt of his Subjects; and that they might alter them upon better Information.

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That the Judges being bound by their Oaths, to counſel the King, he thought they could not refuſe giving him their Advice, when he required it. They did, therefore, obey his Commands. That they were neither promiſed nor threatened, but left to do as their Conſciences directed them; and none of them made any Doubt when they ſubmitted their ſeveral Opinions, unleſs *Hutton* and *Crooke*, and even *Crooke* declared it to be his Opinion, *That, when the whole Kingdom was in Danger, the Defence ought to be borne by all.* As to Juſtice *Hutton*, he did not at all ſubſcribe to that private Opinion, neither was he preſſed to do it. This Opinion was ſubſcribed about *December*, 1635, and they heard no more on this Head, till *February*, 1636, when his Majeſty ſent one of the Secretaries of State, to all the Judges aſſembled at *Gray's-Inn*, and there were great Debates amongſt them concerning it. After which they ſubſcribed their general Opinion, and returned it to His Majeſty. That he gave his Opinion according to his Conſcience, and uſed the beſt Arguments he could for the ſupport of it; and then it was, that the Juſtices *Hutton* and *Crooke*, doubted, *If the King was ſole Judge of the Danger*, and they only ſubſcribed in Compliance with the Majority. That this Opinion was ſoon after publiſhed by the then Lord Keeper in the *Star-Chamber*.

That when the Matter came to be argued in the *Exchequer-Chamber*, there was not one Judge who did not deliver his Opinion, that it muſt be in a Caſe of apparent Danger, when the King laid ſuch a Charge on his Subjects: But the Danger was confeſſed by the Demurrer.

He then declared, he ſaid, that the King ought to govern his People by Law, and that he could not alter the Laws, but by conſent of Parliament. He further declared, that if this Contribution was intended to encreaſe the Revenue, or bring any particular Benefit to the King, or was deſigned for any Thing but the Defence of the Kingdom, in a Caſe of Neceſſity, their Judgment would not warrant the Charge; entreating them to believe that he had not the leaſt Intention to ſubvert, or alter the common Law of the Kingdom, or to introduce any new Way of Government.

He had heard too, he ſaid, that there had been ſome ill Opinions conceived of him, concerning his Opinion for ſettling the Bounds of the Foreſts: But he profeſſed he had no Intention to enlarge them: he had, indeed, conferred with the Gentlemen of the County of *Eſſex*, concerning the Bounds of their Foreſts; and produced ſuch Records, as he thought for His Majeſty's Service, leaving them to diſcharge themſelves as they might by Law, but he never went about to overthrow the Charter of the Foreſt, and ſubmitted this, and whatever elſe he had done, to the Goodneſs and Juſtice of the Houſe.

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The Houſe vote him a Traitor.

The Lord-Keeper was no ſooner withdrawn, but very bitter Speeches were made againſt him: It was ſaid, that the Nation had ſeen, and felt, and ſmarted under his Cruelty: That he had recorded that pernicious Judgment in the Caſe of Ship-money in all the Courts of the Kingdom; and was not contented with enſlaving the preſent Generation, but would have entailed Slavery on their Poſterity: and ſhould they be ſo weak, when they had been thus injured and abuſed, to be cajoled with fair Words and Compliments? Some had ſaid, they ought to remember Mercy; but there was ſuch a Thing as fooliſh Pity, and there might be a cruel Mercy: They ought to caſt their eyes upon that deplorable State he had brought *Great Britain* into, and how his Majeſty and his ſubjects had been abuſed and injured by ſuch wicked Inſtruments; and not prove mercileſs to the whole kingdom, by ſparing this great Offender.

Then the Houſe proceeded to vote the Lord Keeper *Finch* a Traitor: 1. For refuſing to read the Remonſtrance againſt the Lord Treaſurer *Weſton*, when he was Speaker, and commanded by the Houſe to read it. 2. For perſuading the Judges to give their Opinion for levying Ship-money. 3. For his Opinions and Actions relating to the Bounds of the Foreſts; and 4. For the ill Offices he had done, in perſuading his Majeſty to diſſolve the laſt Parliament, and publiſhing the Declaration, with the Reaſons for doing it.

He is impeached.

And it was reſolved to ſend the Lord *Falkland* with a Meſſage to the Houſe of Lords, to impeach the ſaid *John* Lord *Finch*, Baron of *Fordwich*, and Lord-Keeper of the Great Seal of *England*, of High-Treaſon.

Goes to Holland.

Of which Reſolutions the Lord-Keeper having notice, withdrew the next Morning, being the 22d of *December*, and went over to *Holland* in Diſguiſe.

However, the Commons proceeded in their Impeachment and having drawn up Articles of Impeachment againſt him, ſent them up to the Lords about the Middle of *January*, 1640. being of the following Tenor.

The Articles of Impeachment.

1. That the ſaid *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper, *&c.* had traiterouſly endeavoured to ſubvert the fundamental Laws, and introduce an arbitrary, tyrannical Government.

2. That, in purſuance of his traiterous Purpoſes, he did in the third or fourth Years of his Majeſty's Reign, being then Speaker of the Commons, and contrary to the Commands of that Houſe, deny, and hinder the reading of ſome Things relating to the ſafety of the King and Kingdom, and the Preſervation of Religion, and did forbid all Members to ſpeak; and ſaid, if any of them offered to ſpeak, he would riſe and go away, and did offer to riſe and go away; endeavouring, as much as in him lay, to ſubvert the ancient and undoubted Rights and Courſe of Parliaments.

3. That, being one of his Majeſty's Council, he endeavoured to enlarge the Foreſts, particularly in *Eſſex*, Beyond their due Bounds *&c.*

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4. That, being Chief Juſtice of the *Common-Pleas* in the Year 1635. he drew up the Queſtions and Opinions, concerning Ship-money, and ſolicited and procured the Judges to ſign them.

5. That he ſubſcribed an extrajudicial Opinion relating to Ship-money himſelf; and preſſed the Juſtices, *Crooke* and *Hutton*, to ſign them againſt their Conſciences.

6. That he delivered his Opinion againſt Mr. *Hampden* in the *Exchequer* Chamber, in the Caſe of Ship-money; and threatened the ſaid Judges, to induce them to deliver the like Opinion; and urged Baron *Denham* to retract the Opinion he had given for Mr. *Hampden*.

7. That he publiſhed in his Circuit, that his Majeſty's Right to Ship-money was ſo inherent in the Crown, that an Act of Parliament could not take it away; and threatened all ſuch as refuſed to pay it.

8. That he did [illegible] of the Buſineſs of the *Common-Pleas* in his [illegible] Chamber, and ſent Warrants into ſeveral Counties to releaſe all Perſons arreſted on Outlawries, on paying forty Shillings Fees; whereas no ſuch Perſons ought to be bailed or releaſed without a *Superſedeas* under Seal, or Reverſal.

9. The ninth Article charges him with perverting Juſtice, while he was Lord Chief Juſtice of the *Common-Pleas*.

10. That he endeavoured to incenſe his Majeſty againſt Parliaments; and framed and adviſed the publiſhing the Declaration, after the Diſſolution of the Parliament.

All which Treaſons and Miſdemeanors were ſaid to be committed contrary to his Allegiance; to ſcandalize his Majeſty's Government, and alienate the Hearts of his Subjects from him; to create Diviſions between them, and to ruin and deſtroy the Realm; for which they impeached him of High-Treaſon, and of the Miſdemeanors aforeſaid.

Theſe Articles were communicated to the Lords at a Conference between the two Houſes, when Mr. *St. John*, Mr. *Whitlock*, the Lord *Falkland*, and Mr. *Hyde*, made very warm Speeches on the Occaſion; for which they received Thanks of the Commons.

Lord Falkland's *Speech on carrying up the Articles.*

My Lord *Falkland* had the following Expreſſions in his Speech: *viz.* Here are many and mighty Crimes: Crimes of Supererogation, High-Treaſon being but a Part of his Charge: He was a ſilent Speaker, an unjuſt Judge, and an unconſcionable Keeper: His Offence againſt the Parliament was aggravated by his inveighing againſt the Members, by ſcandalizing their Proceedings; by trampling on their Acts and Declarations; by uſurping and devolving the Right; by diminiſhing and abrogating the Power of that and other Parliaments, and making them, as much as in him lay, both uſeleſs and odious to his Majeſty: He purſued his hatred to that Fountain of Juſtice, by corrupting the Streams of it, the Laws; and perverting and corrupting the Judges who adminiſtred it: He endeavoured to annihilate the ancient and notorious Perambulations of particular Foreſts, the better to prepare himſelf for annihilating the ancient and notorious Perambulations

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of the whole Kingdom; the Mares and Boundaries between the Liberties of the Subject and Sovereign Power, to bring all Laws from his Majesty's Courts into his Majesty's Breast: He gave our Goods to the King, our Lands to the Deer, and our Liberties to the Sheriffs; so that there was no way, by which we had not been oppressed and destroyed, if his Power had been equal to his Will; or his Majesty's Will had been equal to his Power. This was the highest kind of parliamentary Treason: A Treason that needed not an Accumulation of many several Actions, which alone were not Treason (as the Earl of *Strafford* was charged by Articles carried up against him about six Weeks before): But this was a Treason, of itself, as well against the King as the Kingdom: Which took from his Majesty the Ground of Rule, the Laws, and his greatest Honour of ruling over Freemen; a Power, much nobler than that of governing Slaves and Villains; depriving his Majesty thereby of the principal Support of his Government, the Hearts and Affections of his People; a better and stronger Wall about the King than the Sea was about the Kingdom: And, by begetting a mutual Distrust, and by that a mutual Disaffection between them, hazarded the Destruction of both.

And as it was unreasonable to suspect their Lordships Justice in any Case, so more especially here, where their Interest was so nearly concerned: Their great Share of Possessions giving them at least an equal Concern for their Properties: The noble Care of their Ancestors, in Founding and Asserting their common Liberties, rendering their just Defence of them their proper and peculiar Inheritance, and exciting them to oppose and extirpate all such Designs as would introduce and settle an arbitrary and intolerable Form of Government, that would have made their Lordships, and their Posterity, but RIGHT HONOURABLE SLAVES.

The Judges ordered to be examined against him.

On the 30th of *January* the Lords ordered that such of the Judges should be examined, against the Lord *Finch*, as the Commons should desire, and by the same Lords that were appointed to take the Examinations against the Earl of *Strafford:* And on the 15th of *February*, a Proclamation was published, at the Instance of the Lords, to summon the Lord *Finch*, late Lord Keeper, to appear personally before the Lords in Parliament to answer the Impeachment of High-Treason, preferred against him by the Commons: But his Lordship remaining on the other Side of the Water till their Fury was much abated, and the Parliament having some greater Sacrifices to make, I do not perceive there were any farther Proceedings against the Lord *Finch*. He lived in Exile about 8 Years; after which it cost him about seven thousand Pounds, by way of Composition for his Estate with the Usurpers; and he lived, not only to see the detested Murder of his Royal Master, by the same pretended Patriots, but the joyful Restoration of his Son King *Charles the Second*.

He lived to see the Restoration.

Remarks on the Prosecution of Lord Finch, *and the rest of the Judges.*

An Impeachment is said, in some Particulars, to resemble a Bill in *Chancery*; where the Plaintiff charges the Defendant with every Thing he can suggest, true or false, in order to discover some Thing to his own Advantage: And there may be a further View, namely, to blacken and asperse the Person accused, and his Adherents, in order to render them as odious to the World, as they are in the Eyes of them who are at the bottom of the Prosecution; by which they hope, perhaps, to serve the Interest of their own Party in general; to gratify their private Revenge, or promote their own ambitious Projects.

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If the Person impeached is guilty of half the Crimes he is usually charged with, he ought not to be suffered to live: But we are sensible Prosecutors allow themselves a great Latitude in framing Charges of this Nature. They hold it sufficient to accuse any Man upon common Fame, or on the Suggestions of an Enemy, without examining the Credibility of the Facts; in which they apprehended they do the Party no Injustice, because the Proofs are afterwards to be weighed and considered by his proper Judges: But, surely, a Man may receive great Injustice from such a Charge, though there should not be a Tittle of it true; for he may not have his Proofs always at Hand to clear his Innocence: And, if he should be acquitted, and escape with his Life, it is ten to one but his Reputation suffers; for nothing is so sure as that, where a great deal of Dirt is thrown, some will stick; and all that hear the Calumny may not be acquainted with the Force of the Defence. A Person once charged with horrid Crimes at the Bar of Justice, will suffer in his Reputation, among some People at least, how innocent soever he may be in Reality; and therefore, these general Accusations, upon little or no Evidence, surely cannot be perfectly agreeable to the Rules of Justice.

We find also in this Case, that, notwithstanding the violent Prosecution of the Lord-Keeper, and the rest of the Judges, during their first Fury, the Party contented themselves with draining their Purses: Though none of the Judges withdrew, but the Lord *Finch*, they proceeded against none of them capitally, but compounded the matter even with Lord *Finch* himself, when he returned to *England* again; which, surely, they would not have done, if they had really thought those execrable Traitors, and the Enemies to their Country, they had represented them in the several Articles exhibited against them.

But what is most amazing is, That Gentlemen of sound Principles, and of such Penetration as the Lord *Falkland* and Mr. *Hyde* (afterwards the Lord *Clarendon*) appear to have been, should be so long deluded by the specious pretences of the Faction, as to join in the common Cry, and assist in running down the Judges and Officers of the State, and even of the Administration itself; and thereby contribute in so high a Degree to the Subversion of that Government, they afterwards so bravely and zealously endeavoured to defend and support against the Faction, they had thus countenanced: The Lord *Falkland*, we know, died fighting in the Field for his Majesty, and the Constitution; and no one served the Crown with greater Fidelity than Mr. *Hyde* did afterwards;

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terwards; though it muſt be acknowledged, they were both, for ſome time, engaged very deeply with the Malcontents.

It has been obſerved, that the diſaffected Party uſually have the Cunning to engage ſome of the moſt deſerving and popular Men among ourſelves, in carrying on their Deſigns: They are ſuch exquiſite Hypocrites, and know how to diſguiſe their Views ſo well, that they frequently deceive even the moſt Penetrating, and draw them in to ſerve their Purpoſes, till they have ſecured their Game: Without the Aſſiſtance of thoſe who were looked upon to be ſincerely in the Intereſt of the Church and State, they could never hurt either. The Ruin of the Kingdom in 1641. may, in a great meaſure, be aſcribed to the Friends of the Conſtitution, who were over-reached by their Enemies, and ſaw their Error too late; and if ever it be deſtroyed again, it will probably be effected in much the ſame manner. 1640. 16 Car. I.

As to the Judges in general, who fell thus under the Cenſure of that Rebel Parliament, they ſeem, moſt of them, to be Men of as great Probity and Learning as ever ſat upon the bench. They were proſecuted, as the Lord *Strafford*, Archbiſhop *Laud*, and the reſt of the King's Miniſters and Officers were, in order to expoſe his Majeſty's Adminiſtration, and to ſubvert the Government at leaſt. Theſe were the Views of thoſe who were at the Bottom of theſe Proſecutions; the reſt were carryed away with the Stream, not reflecting on the Conſequences of their Conduct.

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Earl of Strafford's *Trial.*

The Trial of THOMAS Earl of STRAFFORD, Lord Lieutenant of *Ireland*, and Lieutenant-General of his Majeſty's Armies, on an *Impeachment of the Houſe of Commons for High-Treaſon*, which was carried up to the Lords, *Nov*, 11. 1640. 16 *Car.* I.

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Pym *moves the Impeachment.*

THE Parliament, which began the Grand Rebellion againſt King *Charles* I. meeting on the 3d of *November*, 1640. Mr. *Pym*, one of the chief of the Faction in the Houſe of Commons, moved on the eleventh of the ſame Month, That the Doors might immediately be locked up, for he had matters of Importance, he told them, to communicate to the Houſe; which being agreed to, he made a moſt virulent Speech againſt the Earl of *Strafford*; declaring, he was the greateſt Enemy to their Liberties, and the greateſt Promoter of Tyranny and Arbitrary Power, that any Age had produced; and being ſeconded by ſome Gentlemen of the ſame Party, it was reſolved to impeach the Earl forthwith of High-Treaſon: And Mr. *Pym* was ordered to go himſelf to the Lords, and impeach him at their Bar; and to require he might be ſequeſtred from the Houſe, and committed to ſafe Cuſtody: Which Mr. *Pym* with great Alacrity executed, as ſoon as he received his Orders; and the Earl of *Strafford* being then in the Houſe of Peers, ſome Lords cry'd out with unuſual Clamour, that the Earl ſhould withdraw; inſomuch that it was with Difficulty he obtained leave to be heard firſt in his Place.

And carries it up.

In his Speech on this Occaſion, he declared his Innocence; and deſired he might not be reſtrained of his Liberty upon a general Charge, before any one Article was exhibited againſt him: However, they reſolved, after a very ſhort debate, that he ſhould be committed to the Black-Rod: Then the Commons made an Order, that none of their Houſe ſhould viſit the Earl, in which they were imitated by the Peers: The Lords alſo, at the Deſire of the Commons, appointed a Committee, to take the Depoſitions of the Witneſſes againſt the Earl of *Strafford*, in the Preſence of another Committee of the Lower-Houſe; and it was agreed, that ſuch Peers as were Witneſſes ſhould be upon their Oaths: That Privy-Councillors might give Evidence againſt him: and, that the Examinations ſhould be kept private, till the Commons thought fit to make uſe of them; and on the 25th of *November*, Mr. *Pym* carried up nine Articles againſt the Earl, of the following Tenor, (*viz.*)

Nine general Articles againſt the Earl.

1. That he had traiterouſly endeavoured to deſtroy the Conſtitution, and introduce an arbitrary Government.

2. That he had aſſumed Regal Power, to the undoing of many.

3. That he had converted great Part of his Majeſty's Treaſure and Revenues to his own uſe.

4. That he had abuſed his Authority, by encouraging Papiſts.

5. That he had endeavoured to create a War between *England* and *Holland*.

6. That, being Lieutenant-General of his Majeſty's Armies, he had betrayed his Majeſty's Subjects to Death, and his Army to a ſhameful Defeat at *Newborne* by the *Scots*, and ſuffered *New-Caſtle* to fall into their Hands, to the End *England* might be engaged in an irreconcileable Quarrel with the *Scots*.

7. That he endeavoured to incenſe his Majeſty againſt Parliaments, thereby to create Diviſions between him and his People, and deſtroy theſe Kingdoms; for which they impeached him of High-Treaſon.

8. That he committed theſe Acts while he was Lord Deputy of *Ireland*, Lieutenant-General of the Armies of *England* and *Ireland*, Lord Preſident, and Lieutenant-General of the North.

9. The Commons, ſaving to themſelves the Liberty of exhibiting any other Accuſation, prayed, that the Earl might be brought to Juſtice, *&c.*

Theſe general Articles ſeem to be ſent up with no other View, than that they might have

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have a Pretence for his being committed to the *Tower*, while they ſhould hammer out more particular Articles, and fiſh for Witneſſes to ſupport their Charge; for on the 30th of *January* 1640, they ſent up twenty-eight ſpecial Articles, againſt him, in which the former ſeem to be comprehended.

Twenty-eight ſpecial Articles againſt him.

1. They charge, That the Earl, being Preſident of the North, did on the 21ſt of *March*, 8 *Car.* procure a Commiſſion, with Inſtructions, directed to himſelf and others, empowering them to determine all Miſdemeanors and Offences in the North; and particularly, they were appointed to proceed according to the Courſe of the *Star-Chamber* againſt divers Offences; and to proceed according to the Courſe of the Court of *Chancery* concerning Lands, and grant Injunctions to the *Common Law* Courts: And that he exerciſed thoſe Powers over the Perſons and Eſtates of ſeveral, deprived them of their Eſtates and Poſſeſſions, and fined and impriſoned them, to their utter Ruin; and particularly Sir *Conyers Darcy* and Sir *John Bourchier:* That he procured Directions, that no Prohibition ſhould be granted; and that none ſhould be diſcharged on a *Habeas Corpus*, till they had performed their Decrees: and that in the 13th of the King he cauſed the Commiſſion to be renewed, with additional Inſtructions.

2. That, ſoon after his procuring the firſt Commiſſion, he declared at the Aſſizes at *York*, that ſince ſome of the Juſtices of Peace were all for Law, they ſhould find the King's little Finger heavier than the Loins of the Law, in order to terrify the ſaid Juſtices, that they ſhould not execute the Laws.

3. That, in a Speech to the Nobility of *Ireland*, and the Corporation of *Dublin*, the Earl declared *Ireland* was a conquered Kingdom; that the King might do what he pleaſed with them; their Charters were worth nothing, and bound the King no farther than he pleaſed.

4. That *Richard* Earl of *Cork* having commenced a Suit for the Recovery of his Poſſeſſions, of which he was diſpoſſeſſed by an Order of Council, the Earl threatened to impriſon him, if he did not ſurceaſe his Suit; and ſaid he would have neither the Law nor Lawyers diſpute his Orders; adding, That he would make the Earl of *Cork* and all *Ireland* know, that as long as he had the Government, an Act of State ſhould be as binding to that Kingdom as an Act of Parliament.

5. And that he did accordingly exerciſe his Power on the Goods, Inheritances, Liberties, and Lives of the Subjects there, to the Subverſion of the Laws of that Kingdom: Particularly, that he did, in Time of full Peace, cauſe the Lord *Mountnorris* to be condemned to Death by a Council of War; and cauſed Sentence of Death to be pronounced againſt another Perſon (whoſe Name was unknown) at *Dublin*, and he was executed in Purſuance of it.

6. That, on a Paper Petition, he cauſed the ſaid Lord *Mountnorris* to be diſſeized of his Manor of *Tymore*.

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7. That he cauſed *The Caſe of Tenures on defective Titles* to be drawn up; procuring the Reſolutions of the Judges thereupon; by Colour of which he cauſed the Lord *Thomas Dillon* and divers others, to be diſpoſſeſſed of their Freeholds, to the Ruin of many hundred Families.

8. That on the Petition of Sir *John Gifford*, he made an Order againſt *Adam* Viſcount *Loftus*, Lord Chancellor of *Ireland*, and, under Pretence of Diſobedience to the ſaid Order, cauſed him to be impriſoned, and to ſurrender the Great-Seal: That he impriſoned the Earl of *Kildare*, in order to make him ſubmit his Title to the Manor of *Caſtle-Leigh* to his Pleaſure, and kept him, in Priſon a Year, refuſing to enlarge him, though directed to do it by his Majeſty's Letters: That he cauſed an Order of Council to be entered againſt Dame *Mary Hibbots*, although a major Part of the Council were for the Lady; and forced her to relinquiſh her Eſtate, which was ſoon after conveyed to Sir *Robert Meredith*, to the Uſe of the Earl of *Strafford:* And that he impriſoned ſeveral others, on Pretence of Diſobedience to his Orders, for pretended Debts, Titles to Lands *&c.* in an arbitrary extrajudicial Courſe, upon Paper Petitions.

9. That he granted a Commiſſion to ſeveral Biſhops, their reſpective Chancellors and Officers, to commit the meaner Sort of People to priſon, who ſhould not obey their Decrees.

10. That he farmed the Cuſtoms of *Ireland*, and, to advance his Gain, cauſed the Native Commodities to be over-rated; and the Cuſtoms, which formerly were but a twentieth Part of the Value of the Goods, were now a fourth, a fifth, and ſome of them a third Part of the Value.

11. That he extorted great Sums from the Subject, for Licences to export divers Sorts of Goods.

12. That he iſſued a Proclamation againſt the Importation of Tobacco, and then cauſed great Quantities to be imported to his own Uſe; and would not permit the Merchants to vend their Tobacco, unleſs they would let him have it at his own Price: That he iſſued another Proclamation, commanding all Tobacco to be ſeized that was not ſealed by his Agents; and thoſe on whom unſealed Tobacco was found, were fined, whipped, impriſoned, or pillored; by which Means he gained an hundred thouſand Pounds; and though he raiſed the Cuſtoms in other Articles, he leſſened them in this, from Six-pence to Three-pence a Pound, for his own Profit; and that, by the like undue Means, he conſtituted divers other Monopolies.

13. That he commanded the *Iriſh*, by Proclamation, to work their Flax and Yarn into Thread, in a Manner they were unskilled in; and ſeized the Flax that was otherwiſe wrought; whereby he gained the ſole Sale of that Native Commodity.

14. That

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14. That he impoſed an unlawful Oath on the Owners and Maſters of Ships, by Proclamation, requiring them to give an Account of their Lading, their Owners, from whence came, and whither bound.

15. That contriving to bring the Realm of *Ireland* under his Tyranny, he impoſed great Sums on the Town of *Baltimore*, and divers other Places, which he levied by Troops of Soldiers: That particulary he impowered *Robert Savile*, Serjeant at Arms, and ſeveral Captains, to quarter Soldiers on ſuch of the Inhabitants as would not be conformable to his Orders: That he diſpoſſeſſed *Richard Butler*, and above an hundred Families, of their Eſtates by a Military Force, impriſoning the Proprietors, till he compelled them to relinquiſh their reſpective Intereſts, levying War againſt his Majeſty, and his liege People of that Kingdom.

16. That, to continue his Oppreſſions of the Subjects of *Ireland*, he prevailed on his Majeſty, not to ſuffer any Complaints to be received in *England*; and iſſued a Proclamation, prohibiting all, who had any Eſtates or Offices in *Ireland*, to depart the Kingdom without Licence; and impriſoned ſeveral that came over to *England* to complain againſt him.

17. That he affirmed, his Majeſty was ſo well pleaſed with his Army in *Ireland*, and the Conſequences it produced, that he would make it a Pattern for all his three Kingdoms.

18. That, in order to make the Papiſts of *England* and *Ireland* to depend on him, he reſtored ſeveral Religious Houſes to their pretended Owners; particularly two in *Dublin*, which had been aſſigned to the Univerſity there, which were now employed in the Exerciſe of the Popiſh Religion. That he raiſed an Army, of which ſeven thouſand were Papiſts; and that, to engage this new Army to him, he paid them duly, and permitted them to exerciſe their Religion; whereas the old Army were kept without their Pay for a whole Year: And that being a Commiſſioner for compounding Forfeitures for Recuſancy, in the Northern Counties of *England*, he compounded with the Recuſants there at very low Rates, and diſcharged them from all Proceſs, in order to engage them to him.

19. That he impoſed an Oath on the Subjects of *Ireland*, requiring them to ſwear, that they would not proteſt againſt any of his Majeſty's Commands, but ſubmit obediently to them, fining, impriſoning, and baniſhing the Refuſers; and particularly that he fined *Henry Steward* and his Wife 5000 *l.* a piece, and impriſoned them for Nonpayment: That he declared the ſaid Oath did not only oblige them in Point of Allegiance, but to the Ceremonies and Government of the Church eſtabliſhed, or to be eſtabliſhed by his Majeſty; and gave out that thoſe who refuſed to take it, he would proſecute to Blood.

20. That he endeavoured to create in his Majeſty an ill Opinion of the *Scots*, and excited him to an offenſive War againſt them, ſince the Pacification: That he was the chief Incendiary, declaring that the *Scots* Demands in Parliament were a ſufficient Cauſe to make War upon them: That they were Rebels and Traitors; and, if his Majeſty pleaſed, he would root them out of *Ireland*, except they took the Oath in the preceding Article; and that he cauſed ſeveral *Scotiſh* Ships to be ſeized, to engage the Kingdoms in War.

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21. That, having incited his Majeſty to carry on an offenſive War againſt *Scotland*, he adviſed him to call a Parliament; but that if they did not concur in the Earl's miſchievous Projects, they ſhould be diſſolved, and Money raiſed on the Subjects by Force; declaring in Council, *That he would ſerve his Majeſty any other way*, in Caſe the Parliament did not ſupply him.

22. That he procured the Parliament of *Ireland* to declare they would aſſiſt the King againſt the *Scots*; and conſpired with Sir *George Ratcliffe* to employ the Army of *Iriſh* Papiſts he had raiſed, to the Subverſion of the Government of *England*; declaring that, *if the Parliament would not ſupply his Majeſty, he was at Liberty to uſe his Prerogative for what he needed; and that he would be acquitted both by God and Man for ſo doing.*

23. That, the laſt Parliament taking the Grievances of the Kingdom into Conſideration, the Earl and Archbiſhop *Laud* adviſed his Majeſty, by ſeveral Speeches and Meſſages, to urge the Commons to grant a Supply for the War againſt *Scotland*, before they entered on their Grievances: And that a Demand being made by his Majeſty, of twelve Subſidies, in Lieu of Ship-money; while the Commons were debating on the Supply, the ſaid Earl and the Archbiſhop moved his Majeſty to diſſolve that Parliament, and the Earl then incenſed his Majeſty againſt the Members, telling him, *they had denied to ſupply him; and that his Majeſty having tried the Affections of his People, and been refuſed, he was abſolved from all Rules of Government; and that he had an Army in* Ireland, *which he might employ to reduce this Kingdom.*

24. That he falſly declared to others of the Privy-Council, that the Parliament having forſaken the King, and denied him a Supply, they had given him an Advantage to ſupply himſelf by ſuch other Ways as he ſaw fit; and that he was not to ſuffer himſelf to be maſtered by the Frowardneſs of his People. And that the Earl, the Archbiſhop, and the Lord-Keeper *Finch*, publiſhed a ſcandalous Book in his Majeſty's Name, entitled, *The Cauſes that moved his Majeſty to diſſolve the laſt Parliament*, full of bitter Invectives againſt the Commons.

25. That he adviſed the levying of Ship-money, and procured the Sheriffs to be proſecuted for not levying it, and ſeveral to be impriſoned for not paying it; and adviſed, that the Lord-Mayor of *London*, the Aldermen, *&c.* ſhould be ſummoned before the Council, to give an Account of their Proceedings in levying Ship-money, and concerning the Loan of an hundred thouſand Pounds demanded of them by the King; and on their refuſing to certify who were fit to lend, the Earl ſaid, they deſerved to be fined; there was no good to be done with them till they were laid by the Heels, and ſome of the Aldermen hanged up.

26. That

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26. That he cauſed 130,000 *l.* belonging to his Majeſty's Subjects and Foreigners, to be ſeized in the *Mint*; and when it was repreſented what a Prejudice this would be to the Kingdom, ſaid, that the City had dealt undutifully, and were readier to help the Rebels than his Majeſty; and that it was the Practice of other Princes to uſe ſuch Money to ſerve their Occaſions: That the *French* King uſed to ſend Commiſſaries of Horſe to take Account of Men's Eſtates, and levy Money on them by Force; and, directing his Diſcourſe to the Lord *Cottington*, ſaid, this was a Courſe worthy to be conſidered by his Lordſhip.

27. That, being Lieutenant-General in the North, he impoſed a Tax of Eightpence a Day for every Soldier of the Militia in that County, and levied it by Force, declaring that thoſe who refuſed it, were guilty of little leſs than High-Treaſon.

28. That, receiving Advice of the *Scotiſh* Army's bending its March towards *England*, he did not provide for the Defence of *New-Caſtle*, but ſuffered it to fall into their Hands, to incenſe the *Engliſh* againſt the *Scots*; and in order to engage the two Nations in a bloody War, he ordered the Lord *Conway* to fight the *Scots* at the Paſſage of the *Tine*; though he had repreſented, he had not Force ſufficient to encounter them; whereby he betray'd his Majeſty's Army to apparent Danger and Loſs: All which the Earl had done, with an Intent to create a Diviſion between his Majeſty and his People, and to deſtroy him and his Kingdoms; and for which they impeached him of High-Treaſon.

The Earl's Anſwer to the ſaid twenty-eight Articles was in Subſtance as follows:

The Earl's Anſwer.

1. TO the Firſt, the Earl anſwered, That the Commiſſion directed to him and others, to hear and determine Offences in the North, did not differ from former Commiſſions: That he believed Sir *Conyers Darcy* and Sir *John Bouchier* were legally fined; but he was then in *Ireland*; and denies that he did any Thing, but what he might legally do, by Virtue of that Commiſſion.

2. He denies he ſpoke the Words charged in the ſecond Articles, but had ſaid, *The little finger of the Law was heavier than the King's Loins.*

3. He denies the Words charged in this Article, but might ſay, *The Charters of* Dublin *did not bind his Majeſty.*

4. That the Proceedings at the Council-Table of *Ireland* have ever been by Petitions, Anſwers, *&c.* and they have always puniſhed Contempts to their Orders by Fine and Impriſonment; and believes he might tell the Earl of *Cork* he would impriſon him, if he diſobeyed the Orders of the Council-Table.

5. That the Deputies and Generals of the Army have always executed Martial Law in *Ireland*; and the Army there was governed by printed Orders: And the Lord *Mountnorris* being a Captain in the Army, was ſentenced to Death by a Council of War, conſiſting of twenty Officers for mutinous Words, and Breach of Orders; in which the Earl was no Judge, but afterwards procured his Pardon; and Lord *Mountnorris* ſuffered no perſonal Damage, unleſs two Days Impriſonment.

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6. To the ſixth he ſaith, That calling the Lord Chancellor and the Maſter of the Rolls to his Aſſiſtance, upon hearing the Cauſe mentioned in this Article, a Decree was made for the Plaintiff; and the Lord *Mountnorris* might thereupon be put out of Poſſeſſion.

7. To the ſeventh, That the Lord *Dillon* conſented to the ſtating of the Caſe mentioned in this Article, and the Judges delivered their Opinions thereupon; but that neither he nor any one, were bound thereby, or put out of Poſſeſſion.

8. He ſays that a Decree was made by the Privy Council of *Ireland* againſt the Lord *Loftus*; and, on an Appeal to the King and Privy Council of *England*, that Decree was confirmed; and for Diſobedience to that Decree, and Continuance of his Contempt, he was committed cloſe Priſoner, and the Great-Seal delivered up by his Majeſty's Command. And that an Information being exhibited againſt the Lord *Loftus*, in the *Star-Chamber*, for his Oppreſſions, as Chancellor, he ſubmitted, deſiring he might be an Object of his Majeſty's Mercy. That the Earl of *Kildare* was committed for not performing an Award, made by King *James*, and an Award in Purſuance thereof by the Earl of *Strafford*; and a Letter being unduly obtained, he was not diſcharged thereupon; but upon another Letter, and making a Submiſſion, he was enlarged. That the Lady *Hibbots* and *Hoy* her Son, having made a fraudulent Bargain with the Petitioner *Hibbots*, for Lands of great Value, was ordered by the Council to deliver up the Writings, no Aſſurances being made, or Money paid; and believes ſhe might be threatened to be committed, if ſhe diſobeyed that Order; but denies the Lands were conveyed to Sir *Robert Meredith* for his Uſe; or that any one had been impriſoned by an Order made by himſelf, in a Caſe of Freehold; though he admits they may have been for Debts and perſonal Things, as had been practiſed by his Predeceſſors.

9. That ſuch Warrants, or Commiſſions, as are mentioned in this Article, have been granted to Biſhops by his Predeceſſors; but that he never granted more than one, and finding it complained of, had recalled it.

10. To the Tenth he ſaith, That the Lord Treaſurer *Portland* offered the Farm of the Cuſtoms for 13,000 *l. per Ann.* and to the Earl had advanced them to 15,500 *l. per Ann.* beſides 8,000 *l.* Fine: That, by his Majeſty's Command, he became a Farmer at thoſe Rates, without Addition; that he diſſuaded the Advancement of the Rates, and it was declined: That the Rates of Hydes and Wool were moderate, and the Trade of Shipping mightily encreaſed in his Time.

11. To the Eleventh, That his Majeſty, to reſtrain the Deſtruction of Timber, had laid a Duty of thirty Shillings, and afterwards of

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three Pounds, *per* Thouſand upon Pipe-Staves exported; which was paid to the King's Uſe, but the Earl had loſt 4 or 500 *l. per Ann.* by it, which was paid to his Predeceſſors, for Licence to export them.

12. To the Twelfth he ſaith, That the Revenue of *Ireland* falling ſhort of the Expences, of the Government, 24,000 *l. per Ann.* the Commons petitioned the Duties on Tobacco might be applied to the Encreaſe of the Revenue, which was conſented to: That the Earl had lent Money to forward the Buſineſs, and, by his Majeſty's Allowance, was a Partner, but had yet made no Advantage thereby; and knew no whipping, or other Puniſhment, for Non-payment of the Duties. That the Farms of the Cuſtoms were advanced 2000 *l. per Ann.* and five Eights. That the Price of Tobacco was two Shillings and Four-pence *per* Pound; and he had not raiſed it, or countenanced any Monopoly.

13. To this Article, he ſaith, That he choſe to advance the Linen Manufacture there, rather than the Woollen, becauſe the latter might prejudice *England:* That he imported great Quantities of Flax, and ſold it without any Profit, to encourage the Natives, the Soil being very proper for it: That he had ſet up abundance of Looms, and ſold a great deal of Cloth to Loſs; but, when they would not be brought to change the old Way of working their Flax for a better, that Manufacture declined.

14. That the Proclamation mentioned in this Article, was ſet forth by the Council of State, to prevent Frauds in the King's Duties; and the Oath enjoined, was approved by the Judges.

15. That the *Iriſh* Agents in the Time of his Predeceſſors, had agreed to pay 120,000 *l.* towards the Maintenance of the Army, and that the Money ſhould be levied by Captains, by Paper Aſſignments, upon Warrants from the ſaid Deputy; but this was continued only part of a Year in his Time, and he was confident no Force was uſed in levying it; and that neither *Richard Butler*, or any other Family, were evicted from their Eſtates.

16. To the Sixteenth, he ſays, That, by the Laws of *Ireland*, none can depart that Kingdom without Licence: However, he had denied his Licence but to three, and that upon very good Reaſons.

17. To the Seventeenth, That, he might ſay to the Soldiers of the old *Iriſh* Army, that the King was ſo well pleaſed with the Exerciſe of their Arms, that he would make them a Pattern for others to imitate.

18. To the Eighteenth, That when the Earl of *Cork* was one of the Lords Juſtices, he ſeized ſome Houſes in *Dublin*, on pretence of their belonging to Jeſuits and Friars, without legal Proceſs; and that Suits being commenced for them at the Council Board, they were reſtored to the Owners; but how they had been employed ſince, the Earl knew not: That he left the Care of raiſing the 8000 Men, mentioned in that Article, to the Earl of *Ormonde*, and believed they could not be raiſed without many Papiſts among them, though moſt of the Officers were Proteſtants; and in the old Army he never made one Officer that was not a Proteſtant; and gave Directions that the common Soldiers ſhould be all ſuch, and he believes they have been duely paid. And the new raiſed Men exerciſed their Religion in no other Manner than was practiſed in the Times of his Predeceſſors. That in his Compoſitions with the Recuſants in the North of *England*, he brought their Forfeitures from 2300 *l.* to 12000 *l. per Annum* within four Years; and that they had no other Privileges than what they had formerly.

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19. To the Nineteenth, he ſaith, he admits that an Oath was tendered to the *Scots* in *Ulſter*, who were near an hundred thouſand Men; it being ſuſpected they would join their Brethren the Covenanters; and that it was taken by all of that Nation in *Ireland*, ſome few excepted, who were cenſured for their Refuſal; but that there was nothing in it relating to the Government of the Church.

20. To the Twentieth, he ſaith, he acknowledges he thought it convenient an Army ſhould be raiſed againſt the Covenanters, but adviſed the conſulting the Parliament in it: That the *Scots* Demands being conſidered by the Council, before the Parliament met, it was unanimouſly agreed, That they were ſuch as might not in Honour, or Safety be granted; and that, if they could not be reduced otherwiſe, His Majeſty might do it by Force; and His Majeſty was adviced to borrow 200,000 *l.* till the Parliament ſat; and he might ſay, that thoſe who raiſed Forces in that Kingdom, were no better than Traitors and Rebels; and that he ſeized ſeveral *Scots* Ships by Warrant from the Lord Admiral, in order to bring them to Terms of Accommodation.

21. To the Twenty-firſt, That the Pacification was broken before he came into *England*; and that he moved for the calling a Parliament, in order to procure a good Underſtanding between the King and his People, and not with the Intent this Article ſuggeſts; and he might ſay, If the Parliament refuſed a Supply, he would ſerve his Majeſty in any other lawful Way.

22. He denies the Words charged in this Article; but ſays, he did repreſent the State of his Majeſty's Affairs to the Parliament of *Ireland*, and they readily gave him four Subſidies: That he alſo raiſed eight thouſand Men, by his Majeſty's Orders, who were ſent to ſecure *Ulſter*, or land in *Scotland*, to divert the Earl of *Argyle*, in caſe he declared for the Covenanters.

23. To this Article he ſaith, He admits, that it being debated in Council, what might move the Parliament to grant a Supply, he did advice, that his Majeſty ſhould lay down Ship-money, and promiſe never to demand it again, and to redreſs their other Grievances; and that he adviſed his Majeſty to accept eight Subſidies: That the Earl drew up a Meſſage of this Tenor

in

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in Writing, and it was given to Sir *Henry Vane*, to deliver to the Houſe of Commons, but he did not know whether Sir *Henry* delivered it or not: But that, the Houſe having debated the Supply two Days, and come to no Reſolution, his Majeſty called a Council the Fifth of *May*; to which the Earl coming in late, was informed the King had declared his Reſolution of diſſolving the Parliament; and Sir *Henry Vane* declaring there was no Hopes the Parliament would give the King a Penny; the Earl ſuppoſing the aboveſaid Meſſage had been delivered to the Commons, did, in his Turn, give his Vote for diſſolving the Parliament, as Sir *Henry Vane*, and the reſt of the Lords of the Council, had done, to the Number of Twenty, (two or three excepted.) That the Parliament being diſſolved, and the King demanding of the Council how Money might be raiſed, now the *Scots* were upon the Point of entring the Kingdom, the Earl declared, he was of Opinion, *That in a Caſe of abſolute Neceſſity, His Majeſty was abſolved from ordinary Rules, and might uſe all moderate Ways and Means for the Defence of himſelf and the Kingdom*; for he conceived, in ſuch Extremity, *Salus populi* was *Suprema Lex:* That he gave his Opinion, as he was bound to do by his Oath of a Privy-Councillor, and not officiouſly; neither did he ſpeak the Words mentioned in this Article, or any other to that Effect.

24. To the Twenty-fourth he ſaith, He gave his Opinion with the Reſtrictions mentioned in the laſt Article: That he had no ill Intentions towards the Parliament, or knew of the publiſhing the Book mentioned in this Article.

25. To the Twenty-fifth, That Ship-money was adjudged and levied before his coming to *England*; nor did he promote the Proſecuting the Refuſers in the *Star-Chamber*; that he had ſaid at the Council-Board, that the Sheriffs ought to be fined for not executing the King's Writs; which was done with an Intention to quicken them, and not with a Deſign they ſhould be proſecuted: And denies the reſt of the Words mentioned in this Article.

26. To the Twenty-ſixth he ſaith, He adviſed neither of the Projects mentioned in this Article. That the Merchants deſiring him to move his Majeſty to releaſe the Bullion, he refuſed to meddle with it; telling them, they might thank themſelves, if, by denying the King the Loan of a 100,000 *l.* in that Time of Danger, they had compelled him to ſeize the Bullion; and that the Earl of *Leiceſter* obſerving, that Commiſſioners were appointed to inſpect the Merchants Shop-Books at *Paris*, and tax every Man according to his Ability, he did ſay, They might bleſs God they were not ſubject to ſuch a King in *England*: But denies ſpeaking the Words ſpecified in this Article, expreſſing his Concern, that his Words ſhould conſtantly be miſrepreſented.

27. To this Article he ſays, That the Gentry of *Yorkſhire* agreed to allow the Trained-Bands a Month's Pay; and it was ordered, by his Majeſty and the great Council of Peers, when any of thoſe Regiments were permitted to return home, they that ſent them out ſhould contribute to the Charge of the reſt; and this was levied by Warrants from the Earl and his Deputy-Lieutenants, and leſſned the Charge of the County: And denied the reſt of the Charge in this Article.

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28. To the laſt Article he anſwered, That he was Lieutenant-General to the Earl of *Northumberland*, and that the Lord *Conway* having twelve thouſand Foot and two thouſand Horſe under his Command, near *Newcaſtle*, and his Majeſty having given Orders for oppoſing the Paſſage of the *Scots* over the *Tine*, the Earl ſent the Lord *Conway* a Letter from *York* the 27th of *Auguſt*, adviſing him to march with eight thouſand Foot, and all his Horſe and Artillery, and defend that Paſſage; but before the Lord *Conway* had received that Letter, he had placed himſelf there with only fifteen hundred Foot and Part of the Horſe: That the Earl had no Charge of the Army; till the 30th of *Auguſt*, when he brought it to *York*, and deſigned to have remained there with the Army, had he not received Advice from ſeveral Hands, that there was a Deſign to proſecute him in Parliament, which induced him to leave the Army under the Lord *Conway*, and come to *London*; adding, that *Newcaſtle* was not under his Care: And as to the reſt of the Matters contained in the ſaid Articles, he was not guilty; praying he might have Time to produce his Proofs and Vouchers in his Defence.

This Anſwer being delivered in the 23d of *February*, and communicated to the Commons, they reſolved not to reply, but join Iſſue on the Anſwer: Whereupon it was reſolved by the Lords, that the Trial ſhould be on the 22d of *March* in *Weſtminſter-Hall*; and the Commons appointed the following Members to be their Managers, (*viz*) *George* Lord *Digby*, *John Hampden*, *John Pym*, *Oliver St. John*, *Jeoffry Palmer*, *John Maynard*, *John Glyn*, Eſquires, and Sir *Walter Earle*, Knight.

Iſſue joined.

Managers appointed.

The Lords coming down from their Houſe to the Court erected in *Weſtminſter-Hall*, on *Monday* 22. *March* 1640. the Earl of *Strafford* was brought to the Bar by Sir *William Balfour*, Lieutenant of the *Tower*: After which the Twenty-eight ſpecial Articles, and the Earl's Anſwer to them, were read.

The Trial begins.

Then Mr. *Pym* opened the Charge againſt the Earl, acquainting their Lordſhips, that he was appointed to take off thoſe Vizards and Appearances of Truth, which were contained in the Preamble of the Priſoner's Anſwer. (*But it is obſervable that Mr.* Ruſhworth, *that partial Collector, from whom this Trial is taken, has omitted that Preamble; and the Faction were ſo induſtrious to ſuppreſs it, that it never could be recovered, any more than the Speech the Earl made*

Mr. Pym *opens the Charge.*

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made in his Defence, of which Mr. Ruſhworth, *gives no more than an Abſtract, though he omits nothing of the Charge; and the Speech alſo is now irrecoverably loſt. We muſt be content, therefore, with ſo much of his Defence as his Enemies have been pleaſed to communicate to us. But to proceed.)*

The Witneſſes produced.

Mr. *Pym* having endeavoured to anſwer the Preamble to the Earl's Anſwer, the Witneſſes were produced, to prove the Facts, the Earl aſſerted therein, were not true; and firſt Sir *Pierce Crosby* was ſworn, to whoſe Teſtimony the Earl objected that he had been cenſured in the *Star-Chamber*, for endeavouring to ſubborn Witneſſes againſt him (the Earl): That he broke out of the Fleet Priſon, to which he was committed, and never appeared publickly till now, when he was brought to give Evidence againſt him, or rather againſt the Court of *Star-Chamber* that cenſured him: Whereupon, ſome of the Lords moving to adjourn, the Managers agreed to wave his Teſtimony for the preſent; but ſaid, they would bring him again another Day; for they did not apprehend that he was charged with any thing that could invalidate his Teſtimony.

Sir *John Clotworthy* was ſworn next, and depoſed, That having voted againſt a Bill in the Houſe of Commons, in *Ireland*, Sir *George Ratcliffe*, a Relation of the Earl's threatned to deprive him of a Leaſe he was poſſeſſed of; and that Sir *Pierce Crosby* alſo having ſpoken againſt a Bill, Sir *George Ratcliffe* ſaid to him, *That was not Privy-Councillor like.*

Lord *Ranelagh* depoſed, That Sir *Pierce Crosby* having voted againſt a Bill, tranſmitted by the Deputy and Council, was ſequeſtred from the Council, by the Advice of that Board, and did not know but this might proceed from the ſaid Deputy's Motion, it being moſt proper for him.

Lord *Mountnorris* depoſed, That Sir *Pierce* was ſequeſtred from the Council Table, on a Complaint made by Sir *George Ratcliffe*, touching his voting; and it was done by a Majority of the Council, of whom the Lord Deputy was one.

Sir *Nicholas Barnwell* depoſed, that he, (the Deponent) voting for the old Boroughs, which had been ſequeſtred from the Houſe on Account of a Judgment againſt them in the *Exchequer-Chamber*, Sir *George Ratcliffe* threatned to quarter 5000 Men upon him; but the Lord Deputy was not then in the Kingdom.

Mr. *Egor* depoſed, That the City of *Dublin* was compelled to pay 55 *l.* a Month to be exempted from quartering of Horſe, which was thought a Grievance, and contrary to their Charter: But, being asked if the Lord Deputy's Horſe and Foot-Guards were not billeted there before his Time, he anſwered, that the Foot were, but the Horſe only for a Month at a Time, or ſo; and it was never drawn into a Matter of Money.

A Remonſtrance of the Houſe of Lords of *Ireland* was produced next, to prove that the Earl had endeavoured to ſubvert the Laws, and corrupt the Adminiſtration of Juſtice: To which the Earl objected, That this was a Matter fallen out ſince his Impeachment; and that it was procured by a Faction, as he ſhould ſhew hereafter. The Managers replied, he ought not to be allowed to charge the Commons with Faction and Conſpiracy, and demanded their Lordſhip's Juſtice. The Earl, thereupon, ſaid, he had no Intention to reflect on the Commons of *England*, or *Ireland*; but upon ſome that were not Members of either Houſe.

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Upon reading the Remonſtrance, the Managers obſerved, That all the Earl's glorious Declarations of his own Merits, were confuted, and Sir *Edward Warder* was next produced, to prove that *Ireland* bore its own Charges, before the Earl's Adminiſtration; and the Lord *Mountnorris*, and Sir *Robert Pye*, gave Evidence in order, to the ſame Effect.

Whereupon the Earl demanded, if the conſtant Charge of the Government did not exceed the conſtant Revenue when he came thither? The Managers admitted it did; but ſaid, that Deficiency was ſupplied by a Loan of 120,000 *l.* from that County; ſo that nothing went from *England:* To which the Earl replied, That, notwithſtanding that Loan, the Crown was indebted near 100,000 *l.* when he went thither.

Sir *Adam Loftus*, the Vice-Treaſurer, was ſworn next, and depoſed, That the Earl made uſe of 24000 *l.* of the King's Money, notwithſtanding his Majeſty's Neceſſities, but that it was repaid about three Months ſince; which, the Managers obſerved, was ſince this Proſecution began: And they inſiſted, that if the Earl would anſwer any Thing that had been alledged againſt him, he ſhould do it preſently. To which the Earl ſaid, That the Remonſtrance, and ſome other Things, having been produced in Evidence againſt him, which he did not expect, he deſired he might have Time to recollect himſelf; but was told, the Commons did not preſs theſe Things as Matter of Crime, but to confute the Untruths in the Preamble to his Anſwer; and therefore, there needed no farther Time to anſwer theſe Particulars.

The Earl defends the Preamble to his Anſwer.

Whereupon, the Earl entered immediately on the Defence of the Preamble to his Anſwer: And firſt, as to that Part of it, which ſhewed that many good Laws had been made in *Ireland*, by his Means, he obſerved, that was not denied directly, only it had been retorted upon him, that good Laws were of no uſe where an arbitrary Government was ſet up againſt the Laws; but, as this was part of the enſuing Charge, he ſhould ſpeak to it hereafter.

And though it was objected there had been but two Parliaments in his Time, it was evident there had not been ſo many in fifty Years before: And he ſtill inſiſted, he had never been concerned in any Monopolies, but always diſcouraged them: And it was ſufficiently evident now, that his Commiſſion was not more extenſive than his Predeceſſors.

It appeared alſo, that the Revenue of *Ireland* fell ſhort; and there was a Neceſſity of a Contribution, to ſupply the Deficiencies: That the

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the Crown was 100,000 *l.* in Debt when he went thither; and he left 100,000 *l.* in the King's Coffers when he came away, having laid out conſiderable Sums beſides in Purchaſes for the Crown: (Indeed, the Commons acknowledged that the Revenue had been encreaſed; but ſuggeſted that it had been done by indirect Means.) And they ſaid it was not true, that *Ireland* did not ſupport itſelf when he came thither; for, what was deficient in the Revenue, it appeared, was raiſed by Contributions in that Kingdom: To which the Earl replied, that what he meant, was, that the *conſtant* Revenue was not ſufficient *then*; whereas it was *now*, though 600 Horſe were added to the Army.

And, as to his uſing 24000 *l.* of the King's Money, he had the King's Warrant to make uſe of 40000 *l.* for three Years at a Time, when there was a Surpluſage of 100,000 *l.* in the Treaſury; and that it appeared he had repaid it before the Time appointed: And that, while he had it, there was the Value of 40,000 *l.* left in the Comptroller's Hands, as a Security, purſuant to the Warrant. However, by an Order from the Commons of *Ireland*, (by what Law he knew not) his Magazines were ſeized, his Goods taken away, and given to others, to ſell at their own Price; and his Servants and People impriſoned, as if he had been already convicted of Treaſon.

That he had not only cauſed the Goods and Poſſeſſions of the Church to be reſtored, as he affirmed in the Preamble to his Anſwer; but procured an Act of Parliament to prevent their being waſted or embezzled for the Future: Nor was there any Proof of his cauſing theſe Reſtitutions to be made by illegal Methods, as had been ſuggeſted. He ſtill inſiſted, he had preferred many deſerving Men in the Church; and, that the Number of Proteſtants was greatly encreaſed in *Dublin*, ſince his Adminiſtration; which the Managers did not now controvert.

He obſerved further, that it ſeemed to be admitted he had preferred none but Proteſtant Officers: And as to the quartering of Soldiers in *Dublin*, it appeared that former Deputies had their Guards quartered there.

It was manifeſt alſo, that the Shipping of *Ireland* was vaſtly encreaſed; there being now an hundred Tons to one there was when he arrived there; and the Cuſtoms were advanced from thirteen to forty thouſand Pounds *per Annum*.

He admitted Sentences had paſſed againſt ſome Jurors in the *Star-Chamber*, for going contrary to plain Evidence; however, he had but one Voice there, and thoſe Sentences appeared to be founded upon the greateſt Reaſon; for, unleſs a ſtrict Hand were kept over the Natives, their Prieſts would lead them as they pleaſed; it is plain they did not, or rather would not, underſtand the Evidence.

That as to what had been ſuggeſted of his wronging his Majeſty of 5 or 6000 *l. per Ann.* in the Cuſtoms, he ſhould make it appear, when he came to anſwer that Article, that he had made a very advantageous Bargain for the Crown. And thus having gone through the Preamble to his Anſwer, he obſerved, that the Evidence of Sir *John Clotworthy* and the Lord *Ranelagh* did not concern him; that the Evidence of other Witneſſes, related to what had been ſpoken when he was out of the Kingdom; and, indeed, that Sir *George Ratcliffe*, and not he, was affected by their Teſtimony.

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That he had Witneſſes to prove, that the Preamble to the Act for the four Subſidies, was the general Vote of the Houſe of Commons, and never excepted to, till he was impeached; and the Reaſon of excluding Sir *Pierce Crosby* from the Board, was, his having voted for the Bill in Council, and ſet his Hand to the Tranſmiſſion, and afterwards voted againſt it in the Houſe.

The Managers, in their Reply to the Earl, ſeemed to admit a great deal of what he had affirmed, in the Defence of the Preamble to his Anſwer, to be true; but obſerved, That if the Charge ſtill remained in Force, as they conceived it did, the Services he had done could not mitigate his Crimes; that if it were true, that he himſelf had not encroached on the Privileges of Parliament; yet if, under his Government, thoſe Privileges had been invaded by others, he could lay no great Claim to Merit: And as to the Earl's Obſervation, that many Things were not proved, they only deferred producing that Part of their Evidence till they came to the Articles: That if he had oppoſed Monopolies, he might do it for ſiniſter Ends; and doing his Duty in one Inſtance would not compenſate for his Neglect of it in another. They concluded, that what they had forborne to reply to in the Preamble, would be made good in the Charge; *and then the Court adjourned.*

Art. 1. The Peers being aſſembled again in *Weſtminſter-Hall*, the 24th of *March*, and the Earl brought to the Bar, Mr. Serjeant *Maynard* opened the firſt Article of the Impeachment, relating to the Alteration of his Commiſſion, as Lord-Preſident of the North; to prove which ſeveral Parts of the Commiſſion were read: And afterwards *John Gore* was ſworn, who depoſed, that in *November* 1632, his Father, Sir *Thomas Gore*, was arreſted at *London*, by a Serjeant at Arms, for a Contempt to the Court of the Preſident and Council of *York*; and he appealing to the Privy-Council, the Earl of *Strafford* fell on his Knees, and beſought the King, that if he had not Power to bring in a Delinquent, who affronted the Court, upon his ſtepping out of the Precincts of its Juriſdiction, he might leave that Service, and lay his Bones in his own Cottage; and that his Father was afterwards detained eighteen Weeks in Cuſtody.

Other Witneſſes depoſed, that the Earl would not ſuffer Prohibitions in the North; and cauſed ſuch Perſons as brought them to be ſummoned before the Preſident and Council there, and committed to priſon.

The Managers having finiſhed their Evidence on this Article, and the Earl being ordered to proceed in his Defence, he deſired he might retire and peruſe his Notes; but they would only give him leave to look over them at the Bar; which the Managers told him was a Favour. The Earl anſwered, the Caſe was different where a Men was

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impeached for a known Treaſon, and where he was to anſwer ſuch a mixed Charge; and he thought it very ſtrange that when a Thouſand Miſdeameanors would not make one Felony, twenty eight Miſdemeanors ſhould amount to High-Treaſon. As they were acknowledged ſeparately to be but Miſdemeanors, he ought to have had the Benefit of Counſel, and his Witneſſes examined upon Oath: But he, under Pretence that theſe Miſdemeanors amounted to Treaſon together, was debarred of thoſe Privileges, and had not been ſuffered to ſummon his Witneſſes till the *Friday* before; though the Facts, he was charged with, were great Part of them, ſaid to be done in *Ireland*.

And, in Anſwer to this Article, he ſhewed he did not procure the Clauſes, they found fault with in the Commiſſion; but that the King's Council, on receiving the Commiſſion, uſually inſerted what they conceived might conduce to his Majeſty's Service; and it was approved by the Lord-Chancellor before it was ſealed. And as to the Execution of it, he had never done one Act in Purſuance of it, ſince it was made, being moſt of the Time abſent in *Ireland*; however, the Preſident and Council of *York*, from the firſt Inſtitution of that Court, had both a *Star-Chamber* and *Chancery* Power.

As to the Evidence of *Gore*, it related to a Tranſaction before the Date of the Commiſſion, with which he was not charged, and conſequently he was not obliged to give any Anſwer to it; and neither he, nor any other, he obſerved, pretended to prove, that the Earl procured the Clauſes in the ſaid Commiſſion, and that the reſt of the Evidence in this Article conſiſted of Hearſays.

Then he produced his Witneſſes, to ſhew he was abſent in *Ireland* moſt Part of the Time, between *July* 1633 and 1639; and that he never acted as Preſident of *York*, ſince that Commiſſion was renewed in the eighth Year of the King: Concluding, that, as he was charged only with procuring and executing this Commiſſion, he conceived he had given a full Anſwer to both.

The Managers replied, That what *Gore* had depoſed ſhewed the Reaſon of the enlarging the Commiſſion, *(viz.)* the Earl's falling upon his Knees before his Majeſty, when his Father was arreſted; and that, from what the other Witneſſes depoſed, it was probable he was privy to the Alteration of the Commiſſion; and though this alone was not Treaſon, yet the whole Charge together, amounting to the Subverſion of the Laws, was Treaſon, and this was one Evidence of it.

Then the Managers proceeded to the ſecond Article, which charged the Earl with ſaying, at *York* Aſſizes, *That ſome of the Judges were all for Law, but they ſhould find, that the King's Little Finger ſhould be heavier than the Loins of the Law.*

Theſe Words were atteſted by Sir *Thomas Leyton*, Sheriff of *Yorkſhire*, and ſeveral other Gentlemen, who depoſed, That they were ſpoken at the Summer Aſſizes, at *York*, in the Year 1632, or 1633. 1640. 16 Car. I.

To this the Earl anſwered, That it appeared he was in *Ireland* at thoſe Times, and conſequently the Witneſſes were miſtaken. He acknowledged indeed, he had ſaid at another Aſſizes, *That the Little Finger of the Law, was heavier than the Loins of the King*; and produced Dr. *Duncombe*, and Sir *William Pennyman*, as Witneſſes of his ſaying them; but abſolutely denied his ſaying the Words he was charged with in this Article.

The Managers replied, Though their Witneſſes were miſtaken in the Time, yet their Evidence, in the Main, might be true: Whereupon, the Earl obſerved, If it were true, the Facts did not amount to High-Treaſon; and deſired his Counſel might be heard to that Point, at a proper Time.

On the Fourth Day of the hearing, *viz.* the 25th of *March*, 1641, the Managers proceeded to prove the third Article, which charged the Earl with ſaying, *That* Ireland *was a conquered Nation, and the King might do what he pleaſed with them.* And *Robert Kennyday* being produced as a Witneſs of theſe Words, the Earl objected to his Teſtimony, that he had been convicted of Extortion, and other Miſdemeanors, and bore a particular Grudge againſt him; obſerving, that it was a great Hardſhip, that ſuch Men were produced to give Evidence againſt him, as had been convicted of notorious Crimes during his Adminiſtration, and could not be ſuppoſed backward in aſperſing him; But all his Exceptions of this Kind were overruled, and *Kennyday* permitted to teſtify the Earl's ſpeaking the Words charged in this Article. *Richard* Earl of *Cork* alſo atteſted the Earl ſpoke the Words, to whoſe Teſtimony the Priſoner objected that he was a prejudiced Perſon, having been compelled by the Government of *Ireland*, to pay 15000*l.* as a Compoſition for his Miſdemeanors.

The Lords *Gormanſton* and *Killmalloch*, depoſed, That the Earl, in the Preſence of both Houſes of Parliament in *Ireland*, declared, *That* Ireland *was a conquered Nation; and therefore, muſt expect Laws as from a Conqueror:* And Sir *Pierce Crosby* atteſted the ſame Words.

To this, the Earl anſwered, that the Natives of *Ireland* had ever appeared prejudiced againſt their *Engliſh* Governours; that they had occaſioned Proſecutions againſt many of them, who had manifeſted their Innocence, and ſhewn that they deſerved rather to be applauded than cenſured, when the firſt Heat was over, and Matters came to be calmly conſidered; that in the Adminiſtration of Juſtice, many Perſons muſt neceſſarily be offended. However, there was nothing in this Article that amounted to High-Treaſon; and, as it could be no more than a Miſdemeanor, he ought to have been allowed Counſel, and his Witneſſes examined upon Oath; which Advantages he was deprived of by their involving all under the general Charge of Treaſon.

He

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He desired their Lordships also, to reflect on the Hardships of his Case again; That he had no Opportunity given him, of preparing for his Defence, till the *Friday* before; and it was impossible in so short a time to fetch his Witnesses from *Ireland*, and produce his other Proofs: That in all other Courts, where the Defendant puts in his Answer, and it is not replied to; nor the Party allowed to prove his Answer; it is admitted to be true; and so it ought to be in this Case: That according to the Statute of *Ed.* VI. he ought not to be prosecuted for Words above thirty Days after they were spoken, and popular Actions were to be presented within a Year or two at farthest; but here he was prosecuted for Words, supposed to have been spoken six or seven Years before. He desired also, it might be considered, that the Laws and Customs of *Ireland* were different from those of *England*; and hoped their Lordships would distinguish therefore, and not judge him by those of this Kingdom, where the Matter related to *Ireland*.

And as to what had been testified to support this Article, he acknowledged he was still of Opinion, that *Ireland* was a conquered Kingdom, as it was recited to be so several Times, in a Statute of XI. *Elizabeth*, relating to the Attainder of that Famous Rebel, *Shan O Neil*; and as the Words attested were not intended to upbraid that Nation, but to shew how much they were obliged to the Kings of *England*, for suffering them to be governed by the Laws of *England*, and not treating them as a conquered Nation; he did not see how they could be taken amiss; and, in Fact, no Man appeared offended with them, when they were spoken; and it must be admitted, that the Conqueror might have imposed on them *what Laws he pleased*.

Then he called Sir *Henry Slingsby* as a Witness for him, who deposed, That the Earl's design in that Speech appeared to be, to reconcile that People to his Majesty's Government: That he knew they were very well taken by several, and particularly by the Mayor of *Dublin*, who invited him to Dinner that Day; when both he and the principal Citizens expressed themselves extremely well satisfied with what the Earl had said.

As to what the Witnesses testified, relating to their Charters, *viz.* That he said, they were nothing worth, and the King might do as he pleased with them: He did not controvert his saying them, for that the Charters of *Dublin* were forfeited, by their making several By-Laws, contrary to the Common-Law; and their neglecting several Duties they were obliged to perform by those Charters, which had been complained of, both in the Council-Chamber, and the Parliament: He observed also, that the greatest Part of the Aldermen were Recusants, and stood upon their Charters, refusing to obey the order of the Council-board.

Then the Lord *Dillon* was called as a Witness for the Earl, who deposed, that, five or six Years before, the Charters of *Dublin* being brought to the Council-board, the King's Council shewed, that the City exercised By-Laws, contrary to the Common-Law; and that the like Complaints were made by several Members of the House of Commons; particularly, that they hindered *English* Tradesmen, from setting up Manufactures there.

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This was one of the Reasons, the Earl observed, of his Questioning their Charters; and averred that, at his going over thither, the Natives, being Papists, engrossed the Manufactures to themselves, and depressed the *English*; but that now, there were three Protestants in *Dublin* for one, that was there when he went over; and he presumed that what had chiefly incensed that People so much against him was, his interposing so effectually in these Matters: However he had never gone about in a Judicial Way to deprive them of their Charters, but they still enjoyed them in their full Latitude. All that he designed by these Representations, was, to keep them within some Bounds: That as to his saying, *they must expect Laws from the King, as a Conqueror*, they were no Part of the Charge, and consequently, he was not obliged to answer them: However, he never spoke them, which Sir *George Wentworth* attested from a Copy of that Speech he had by him.

To this the Managers said, that they had averred their Charge to be true, though they had not replyed to the Earl's Answer; and therefore the Answer was not to be taken *pro confesso*; nor would it avail him, that *Ireland* was governed by other Laws; for the Words he had spoken, tended to the Subversion of all Laws; and they could shew they were deeply resented, though the the Mayor durst not tell the Earl so then: Then they produced several Witnesses, who deposed, that they believed, the Words charged were in another Speech, and not in that taken by Sir *George Wentworth*; and that they were highly resented, when they were spoken.

They insisted also, that the Common-Law was the same in *England* as in *Ireland*; and, by a Statute there, Causes were restrained to their proper Courts; and the Lord Deputy and Council could not meddle in Causes between Party and Party; and if the Earl could not produce a Statute that authorized him, as Governor, to take Cognizance of private Causes, it must be admitted, he had erected an arbitrary Power, as would appear farther in the following Article.

Then the Managers proceeded to the fourth Article, which charges that he said, in a Cause of the Earl of *Cork*'s, *He would have neither Law, nor Lawyers, dispute his Orders*; *and that he would make the Earl of* Cork, *and all* Ireland *know, that an Act of State, was as binding in* Ireland, *as an Act of Parliament.* To prove the Charge in this Article, the Earl of *Cork* was produced, and deposed, that he was disseized of an Impropriate Rectory, on a Paper

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Paper Petition to the Council; and that no Decrees were ever made there, concerning Lands, before the Earl of *Strafford*'s Time: But it being demanded, if he himſelf, as Preſident of *Connaught*, had not, on Paper Petitions, done the ſame Thing, the Commons inſiſted that the Witneſs need not anſwer the Queſtion, becauſe it tended to make him accuſe himſelf; and of this Opinion were the Lords. Then the Lord *Cork* depoſed farther, That having brought his Action, and repreſented to the Earl of *Strafford* the Hardſhip of being deprived of his Poſſeſſion, on a Paper Petition, without a Trial at Law, he anſwered, *Call in your Witneſſes, or, if you will not, I will clap you up in the Caſtle; for I tell you, I will not have my Orders diſputed by Law, nor Lawyers:* That the Deponent being proſecuted in the *Star-Chamber*, for making a long Leaſe of a Parſonage, contrary to an Act of State; and repreſenting that he was not apprized of that Act, and therefore it was hard he ſhould be proſecuted for it; the Earl of *Strafford* ſaid, *I tell you, my Lords, as great as you are, I will make you, and all the Subjects of* Ireland *know, that any Act of State, made, or to be made, ſhall be as binding to you, and the Subjects of* Ireland, *during my Government, as an Act of Parliament.*

The Lord *Ranelagh* depoſed, That no Decrees concerning Lands, were ever made by the Council, before the Earl of *Strafford*'s Time. *John Waldron* depoſed, That, in a Cauſe between the Merchants of Galloway, and others, concerning a Leaſe at the Council Table, Mr. *Martin*, the Merchant's Counſel, inſiſting on an Act of Parliament in behalf of his Clients, the Earl of *Strafford* ſaid, He would make him know, *that an Act of that Board ſhould be as good as a Statute*, or to that Effect. Some other Witneſſes alſo depoſed, That they heard the Earl ſay the ſame Words, at the Council Table, four or five Years before.

Sir *Pierce Crosby*, depoſed, That the Earl of *Strafford* being at Dinner at the Deponent's Houſe, ſoon after his coming to *Ireland*, the Earl ſaid, *If he lived, he would make an Act of State, equal to an Act of Parliament; adding, that* Ireland *was a Conquered Nation, and the Conqueror ſhould give the Law.*

To the Charge in this Article, the Earl anſwered, that the Council-board in *Ireland*, was a Court of Record, where they proceeded by Bill and Anſwer, *&c.* that his Care to preſerve the Authority of that Court, could not be conſtrued a Subverſion of the Laws, the Law being only adminiſtred in another Channel, according to the Conſtitution of that Kingdom; and that this was the proper Court for the Protection of the Engliſh Planters, and the proteſtant Clergy.

The Lord *Dillon*, being called as a Witneſs for the Earl, depoſed, That, as long as he remembred, in all Cauſes of Plantation and the Church, the Lord Deputy and Council proceeded as in other Courts of Equity; and that upon Contempts of Acts of State, or Proclamations, the Parties were attached and brought before that Board, and ſometimes fined and Impriſoned, and he had heard their Judges ſay, that Acts of State in *Ireland*, were a kind of Temporary Laws: Sir *Adam Loftus* depoſed to the ſame Effect; but both of them declared, that none ever were fined for contempt, in Caſe of particular or private Rights; and it ſeems, the Managers admitted, that the Council-Table there had Cognizance of Cauſes relating to Plantations and the Church, and of ſuch Cauſes as were recommended by the King to the Council; but would not admit the Council to be a Court of Record.

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Upon this Evidence, the Earl of *Strafford* obſerved, that the Council-board in *Ireland* had another Conſtitution than it had here: That the Lord *Cork*'s Caſe related to the Church, of which they had Cognizance, and deſired their Lordſhips would hear his Counſel upon the Statute of 28 *Hen.* 6. for remitting Cauſes to their proper Courts, by the laſt Clauſe whereof the King's Prerogative was ſaved: And as to the Words, he obſerved bare Words, of a higher Nature, would not have amounted to Treaſon, and ought to have been proſecuted within a ſhorter Time, according to the Statute of 1. *Ed.* VI. c. 12. And further, That in the Caſe of the Lord *Cork*, where the Sentence was juſt and honourable, he might, without Offence, ſay, that neither Law nor Lawyers ſhould diſpute his Orders; though it was very improbable he ſhould ſay thoſe Words, when that very Order referred the Matter to a Determination at Law. As to his ſaying that an Act of State was equal to an Act of Parliament, my Lord *Cork* muſt have a very good Memory to make his Evidence agree ſo exactly with the Words of the Charge: However, as he had done no Act, in Purſuance of ſuch a Declaration, it could not amount to High Treaſon; and he did not ſee, but, where an Act of State was made agreeable to, or in purſuance of, an Act of Parliament, and the fundamental Laws of the Realm, and to prevent ſome preſent Miſchief, till the Parliament might provide againſt it; ſuch an Act might be as binding, for the Time, as an Act of Parliament: And he accepted againſt Sir *Pierce Crosby* and ſome other Witneſſes, as prejudiced Perſons.

The Managers replied, That the Lord *Cork*'s Impropriation, was a Lay-fee, and no Church Matter; and therefore the Council had not Cognizance of it: That the Priſoner's Government appeared to have been arbitrary, by his threatening to lay the Lord *Cork* by the Heels, if he went to Law; and it was not material, whether the Order was juſt or not, and that, though Acts of State were a temporary Proviſion till Acts of Parliament could be made; yet, when Things were propounded and rejected in Parliament, they ought not to be ſupplied by Acts of State; and called one *Lotts* to prove, that the Commons having rejected ſome Bills; particularly one, which would have made it Felony for a private Perſon to have Gunpowder in his Houſe; the Lord *Strafford* told them, that notwithſtanding they had voted againſt theſe Bills, he could make them Acts of State, which would do as well: The Earl objected to this Evidence as irregular, being produced after the Reply; but the Lords, however, admitted it: Whereupon the

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the Lord *Strafford* ſaid, he had received particular Directions concerning the truſting Gunpowder in unſafe Hands, which he ſhould forbear to open, as it tended neither to his Acquittal or Condemnation.

Art. 5. The Managers, on the 27th of *March*, 1641, went upon the fifth Article, which charges, that the Earl, in Purſuance of the aforeſaid Speeches, exerciſed an arbitrary Power over the Goods, Inheritances, Lives, and Liberties of the Subject; and, particularly, procured Sentence of Death to be paſſed on the Lord *Mountnorris*, and another Man, by a Council of War, in Time of Peace.

Then the Sentence againſt the Lord *Mountnorris* was read, whereby he was condemned by a Council of War, to be ſhot, or loſe his Head, for ſome Speeches, expreſſing a Deſign of being revenged on the Lord Deputy, for an Affront he had received from him: And the Lord *Mountnorris* himſelf, being produced as an Evidence of the Proceedings of the Council of War againſt him, depoſed, that, on the 11th of *December*, 1635, he was ſummoned to attend the Lord Deputy, at a Council of War the next Morning; and that the Deponent having taken his Place in the Council as Vice Treaſurer, the Lord Deputy charged him with ſome Words, ſpoken three or four Days after the riſing of the preceding Parliament, and read the Words out of a Paper he held in his Hand: And the Deponent deſiring he might be tried as a Peer, and an Officer of the Crown, and not by a Council of War, it was refuſed, and demanded of him, if he would confeſs or deny the Charge; and His Majeſty's Letter was read, directing him to be proceeded againſt in a Council of War, which put him into ſome Confuſion; and the Lord Deputy gave him ſuch Language, as was not fit to be uſed to a Meaner Man: And the Paper, containing the Words he was charged with, was atteſted by the Lord *Moore*, and Sir *Adam Loftus*; but the Deponent denied the Words, declaring they were ſpoken by another Perſon, as he could prove, if he was permitted to ſend for his Witneſſes; but this alſo was denied him. That the Lord *Moore*, who was one of the Witneſſes againſt him, was ordered to ſit as one of his Judges, and the Deponent, being withdrawn about an Hour, was called in again, and the Sentence pronounced againſt him; when the Lord Deputy made a ſevere Speech upon the Occaſion, and ſaid, There remained now no more (if he pleaſed) but to cauſe the Provoſt-Martial to do Execution: However, he ſhould ſupplicate his Majeſty as to his Life, and ſaid, he would ſooner loſe his Hand, than the Deponent ſhould loſe his Head, and the Deponent was then commanded to Priſon; but not having his Health, he was ſuffered to reſide for the moſt Part at his own Houſe.

The Lord *Dillon* depoſed, That he was at the ſaid Council of War; and that every Member, on giving his Vote, declared that he gave it, in confidence that Mercy ſhould be extended to the Lord *Mountnorris*; and that when the Votes were given, the Lord *Strafford* ſaid, he had rather loſe his right Arm, than the Lord *Mountnorris* ſhould loſe a Hair of his Head; and he would write to his Majeſty to ſupplicate his Mercy: That while the Lord *Mountnorris* was withdrawn, the Lord *Strafford* gave no Vote, or ſpoke one Word to incline them one Way or other; and the Lord *Ranelagh* gave much the ſame Evidence; only he added, That the Lord Deputy ſaid, as he had complained to the King, he expected that Honour from the Board, that his Cauſe ſhould be taken into Conſideration, and ſuch Redreſs given as was fit, demanding Juſtice on the Articles: And though he ſaid he would depend on their Judgments, yet he would hold them to the Point of the Articles, and not give them a Latitude of proceeding to make him Reparation according to the King's Letter: But, after the Council fell into the Debate of the Matter, the Lord *Strafford* ſaid not one Word, or gave them any Interruption; and had declared before, if there was not a Neceſſity of his Preſence, he would withdraw.

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Other Witneſſes depoſed, That one *Thomas Denewit* was hanged by Martial Law, for Theft and Deſertion.

To the Charge contained in the fifth Article, the Earl anſwered, That there were twenty Officers preſent at the Sentence againſt the Lord *Mountnorris*, wherein he was no Judge, but became a Suitor to His Majeſty for him, ſo that he only ſuffered a few Days Impriſonment; and that, by his Commiſſion (which was read) it appeared he was impowered to exerciſe Martial Law.

Then he called the Lord *Wilmot*, who depoſed, that Martial Law had been exerciſed in *Ireland*, ever ſince he remembred, without being complained of, either by the Common Lawyers, or by the Parliament; but that, in time of Peace, it had only been exerciſed againſt Traitors and Outlaws. Sir *Adam Loftus*, and the Lord *Robert Dillon*, alſo depoſed, That they had known ſeveral Rebels, and Outlaws executed by Martial Law, but no others, in time of Peace.

Sir *Robert Farrer*, and Sir *George Wentworth* depoſed, That the Lord *Strafford* ſat as a Suitor, and not as a Judge, at the Trial of the Lord *Mountnorris*, and did not vote or intermeddle in it himſelf; nor would ſuffer the ſaid Sir *George Wentworth* to give his Vote, becauſe he was his Brother.

The Lord *Strafford* ſaid, he left the Matter wholly to the Council, and the Lord *Mountnorris* only ſuffered two Days Impriſonment; the proceeding being intended only for Diſcipline, to teach him to govern his Speech with more Modeſty: That he thought the Sentence againſt *Denewit*, was juſt, being condemned for ſtealing a quarter of Beef, and running away from his Colours, the latter being Death by Statute-Law; and that he had been burnt in the Hand before.

The Managers replied, that the Earl's Intention to ſubvert the Laws was evident; and

1641. 17 Car. I. it appeared, that he procured the Sentence againſt the Lord *Mountnorris*, if he did not vote in the Caſe: That his Commiſſion only impowered him to exerciſe Martial Law, when there was a Neceſſity for it, which muſt be underſtood of a time of War; and none of the Witneſſes had proved that it was ever exerciſed in time of Peace, unleſs upon Traitors and Outlaws, that fled from Juſtice: That the Statute that made Deſertion Felony, directed, the Priſoner ſhould be tried by the Common Law, and then he would have had his Clergy. And the Inſtructions given to the Lord *Falkland* were read, importing, *That ſuch as might be brought to a Trial at Law, ſhould not be tried by Marſhal-Law, unleſs in Time of War and Rebellion:* And one of the Managers obſerved, that the Earl of *Strafford* did not ſo much deſire the Blood of the Lord *Mountnorris*, as to have the Peers under his Girdle.

Art. 6. On the twenty-ninth of *March* the Managers went upon the ſixth Article, which charges the Earl with diſſeizing the Lord *Mountnorris* of his Freehold, on a Paper Petition.

To prove which, a Decree was read, whereby the Lord Deputy, aſſiſted by the Chief Juſtice of the *Common-Pleas*, decreed *Henry Rolſton* to be put into Poſſeſſion of the Lord *Mountnorris*'s Lands; and that Lord depoſed, that he was actually put out of Poſſeſſion of thoſe Lands accordingly, by a Warrant of the Earl of *Strafford*'s; and Mr. *Anſlow* depoſed to the ſame Effect.

The Earl anſwered, that the Decree was juſt; that his Commiſſion authorized him to determine ſuch Cauſes, and his Predeceſſors had exerciſed the like authority upon Petitions made to them; and produced the Lord *Robert Dillon*, and ſeveral other Witneſſes, to prove that former Deputies had made the like Decrees; and that the Provincial Courts, which derived their Authority from him, did the ſame: That the Decree was for the Relief of a poor Man the Lord *Norris* had violently diſpoſſeſſed of Lands of 200 *l. per Ann.* That it was neceſſary to relieve the poorer Sort of People this Way, who could not undergo the Expence of legal Proceedings; and that he receiv'd his Majeſty's Orders to relieve them as former Deputies had done: That he had obſerved the Rules that guided other Courts of Equity; and though the ſame Thing might be illegal here, it was according to the Laws and Cuſtoms of *Ireland*, by which he ought to be adjudged in this Caſe. Nor did he underſtand how the Enlargement of a Juriſdiction, (if it had been ſo) could be ſtrained up to Treaſon: This was of the Nature of a Court of Requeſts, and did not intrench on the Juriſdiction of the Courts of Law.

The Managers replied, that no Deputy had ever determined the Poſſeſſion of Lands before, unleſs in Plantation Caſes; nor did his Majeſty's Letter warrant his doing of it. And the Earl of *Cork*, Lord *Ranelagh*, and other Witneſſes depoſed, that no former Deputy ever determined Matters relating to Lands, in Equity, or otherwiſe.

1641. 17 Car. I. A Petition of the Lord *Mountnorris*, for a Warrant for a Pardon under the Great-Seal, and the Lord *Strafford*'s Anſwer, alſo were read, importing, that when the Petitioner ſhould acknowledge the Juſtice of his Sentence his Requeſt ſhould be conſidered. The Lady *Mountnorris*'s Petition to his Majeſty, and the King's Reference of the Matter to the Lord Deputy, alſo were read; wherein his Majeſty directs, that, upon ſuch a Submiſſion as the Lord Deputy ſhould approve, the Lord *Mountnorris* ſhould have Liberty to come to *England*; and Mr. *Anſlow* depoſed, that when the Lady *Mountnorris* petitioned the Deputy, he refuſed to receive the Petition.

Evidence was produced alſo, where the Lord Deputy had decreed the Poſſeſſion of other Lands: But he ſhewed, that was done by the conſent of the Parties, and that the Poſſeſſion was not altered; and ſaid, he would make it appear, if they would ſuffer him to give the Lord *Falkland*'s Book of Entries in Evidence, that there were Hearings between Party and Party, Injunctions to the Judges, and Warrants to the Sheriffs, to give Poſſeſſion of Lands, to be found in them: And that my Lord *Mountnorris* might thank himſelf for his Reſtraint, not making his Submiſſion as his Majeſty directed: That the Lady *Mountnorris* brought him only the Copy of a Petition to his Majeſty, and he told her he could do nothing on a Copy.

One of the Managers replied, that the Lord *Strafford*'s Cruelty exceeded that of other Tyrants, for he kept the Lord *Mountnorris* in Priſon, till he ſhould acknowledge the Juſtice of a Sentence, which he knew to be unjuſt. Other Tyrants ſometimes found out falſe Witneſſes; but to make a Man a falſe Witneſs againſt himſelf was much more tyrannical: And they conceived the Charge ſtill remained, *That the Earl of* Strafford *had determined Cauſes, which his Commiſſion, or the Authority he had received from his Majeſty, did not warrant.*

Art. 8. The next Day, being the 30th of *March*, they opened the eighth Article; which charges the Deputy with impriſoning *Adam* Lord Viſcount *Loftus* Lord Chancellor of *Ireland*, *George* Earl of *Kildare*, and the Lady *Hibbots*, on Pretence of Diſobedience to his Orders: But the Managers inſiſted only on the Buſineſs of the Lady *Hibbots*, and dropped the reſt. They endeavoured to prove, that the Order was made contrary to the Opinion of a Majority of the Council; and that the Lord Deputy was guilty of Corruption, in procuring Part of the Eſtate in Queſtion to be ſold to his Agents, in Truſt for himſelf.

The Earl of *Strafford*, in his Defence, brought ſome of the Council to teſtify, that a Majority ſigned the Order, and that no Member at the Board took any Exception to the ſigning of it; and, as to the commanding the Lady to perform the Order, on Pain of being fined and impriſoned, he obſerved, that it would be to no purpoſe to make Orders, if they could not enforce Obedience

to

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to them: He denied that the Lands were conveyed to his Uſe, and obſerved there was only Hearſay Evidence of it.

The Managers replied, that the Council had nothing to do with Freehold, unleſs it concerned Plantations, or the Church, or was ſpecially recommended to them; and and though that was not Treaſon of itſelf, yet it conduced to prove their general Charge, that he ſubverted the Laws.

Art. 9. Then they proceeded to the 9th Article, which Charges his giving Warrants to the Biſhop of *Downe* and *Connor*, and his Officers, to impriſon the poorer ſort of People, who refuſed to obey Eccleſiaſtical Decrees or Orders, and produced a Copy of the Warrant to prove it; and, when the Earl objected that the Copy was not proved, the Lords were ſatisfied with the Depoſition of Sir *James Montgomery*, who ſaid he *believed* it to be a true Copy: Sir *James* alſo depoſed, that he had ſeen ſeveral Warrants, under the Hand of the Biſhop of *Downe*'s Chancellor, directed ſometimes to Conſtables, ſometimes to Apparitors, for apprehending Perſons, (twenty or thirty in a Warrant), and known them executed with great Cruelty, wounding, beating, and impriſoning the Parties; and that he himſelf was charged to be aſſiſting in the Execution of ſuch Warrants: Whereupon the Managers obſerved that his Acts of State, exceeded Acts of Parliament, for none could be puniſhed on the Statute, till a Writ *de excommunicato capiendo* iſſued; but by Lord *Strafford*'s Warrant, People were impriſoned, that appeared not on a Citation; and that he did not only aſſume this Power himſelf, but conferred it upon others; and therefore it appeared high time to charge him with ſubverting the Laws of *Ireland*.

But the Earl produced Witneſſes to prove, that former Deputies had iſſued the like Warrants, and that this to the Biſhop of *Downe*, was the only Warrant he iſſued of this Kind; and ſaid, if he had not acted altogether agreeable to Law, he hoped every Miſtake of the Law did not amount to High Treaſon; for if it did, there would be more Proſecutions for Treaſon than Treſpaſs. The Managers replied, as before, that though this ſingle Act was not Treaſon, it was a ſtrong Evidence to prove his Subverting the Laws.

Art. 10. On *Wedneſday March* the 31*ſt*, the Managers proceeded to the 10th Article, which charges him with raiſing the Cuſtoms for his own Benefit, having firſt taken a Leaſe of them.

But he ſhewed that they were raiſed before his time, and that he was in a manner obliged by his Majeſty, to take a Share of the Leaſe, and that a greater Rent and Fine was given by him and his Partners, than former Farmers paid; However, he obſerved that there could be no Treaſon in this Tranſaction: He acknowledged that the Cuſtoms were greatly encreaſed by a flouriſhing Trade, which ſhewed the Falſity of the Remonſtrance procured from *Ireland*, relating to the Decay of Trade.

Then they went upon the twelfth Article, which charged the Earl with monopolizing Tobacco: They urged, that the Farmers of it were only his Agents and Servants; that he had publiſhed Proclamations, prohibiting all Perſons importing it but his Patentees, or ſelling any that was not ſealed, and laying a Duty of two Shillings a Pound on all Tobacco imported by others; inſomuch that Tobacco, that was ſold formerly for ſix or ſeven Pence a Pound, was now ſold at two and three Shillings a Pound. To which the Earl anſwered, that the Parliament of *Ireland* had petitioned, that the Duties on Tobacco might be applied to the encreaſing the Revenue, and they were ſo applied accordingly. That Eighteen-pence a Pound had been laid on Tobacco in King *James*'s Time; and that the Proclamations complained of were iſſued by his preſent Majeſty's Direction, and were of the ſame Nature with that publiſhed in *England* concerning Tobacco. That he was not privy to the ſelling Tobacco at unreaſonable Rates, and the Contractors ſtood upon their Juſtification, but had been ſhut up in Priſon by an arbitrary Order of the Commons of *Ireland*; and their Tobacco ſeized and ſold, as he proved, by the very Orders of the *Iriſh* Houſe of Commons, which the Managers oppoſed the reading of a great while, but at length, they were permitted to be read: And the Earl obſerved, that, the Perſons employed being thus impriſoned, and their Effects ſeized on, he was rendered incapable of giving a more particular Account of that matter; that whether they had a good Bargain or not, was not material; but at the time of the Contract, thoſe that now complained of it, had ſo little Notion of the Advantage of it, that they refuſed to become Partners in it: However, were the Bargain never ſo good, it was not treaſonable.

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The Managers replyed, His Majeſty's Letter and Orders had been obtained on the Miſinformations of the Lord *Srafford*; and that there being the like Monopoly in *England*, could not juſtify that in *Ireland*; that the Lord *Strafford* had the ſole Benefit of the Matter, and the Perſons named in the Contract were but his Servants; that a Proclamation could not make a temporary Law, and take away the Subjects Goods: That this was a great Breach on the Property of the Subjects; and if a Grant of the ſole Emption was ſuffered in this Inſtance, it might be extended to every thing elſe: That if the Commons were deſirous, the King's Revenue ſhould be encreaſed, they did not intend that others ſhould feed upon him, while he was in Want himſelf: That the Earl was guilty of a double Treaſon; *Firſt*, In arbitrarily laying a Tax upon the Subjects: *Secondly*, In depriving the King of his Revenue, under a Colour of advancing it: And that his daring to reflect upon the Parliament of *Ireland*, as Arbitrary and Tyrannical, ſhewed what he would do, and ſay of an *Engliſh* Parliament, in time of a Receſs.

On

1641. 17 Car. I. *Art.* 13.

On the firſt of *April*, the Managers proceeded to the 13*th* Article, which charges his Ingroſſing all the Flax in the Kingdom, ordering it to be wrought in ſuch a manner, as the Natives were unpractiſed in, and ſeizing what was wrought contrary to his Directions.

As Evidence of this, a Proclamation and Warrant were read, commanding the Juſtices of Peace to aſſiſt the Officers, in ſearching for, and ſeizing the Yarn prohibited by the Proclamation; and Proof was made of the Seizing one Cart-load in *Connaught*.

Sir *John Clotworthy* depoſed, That the Officers ordered to ſearch and ſeize the Yarn, abuſed their Authority, of which he acquainted the Lord Deputy, and was threatened by his Secretary for being too officious; that upon ſending out thoſe Officers, the Markets were deſerted, and then the Officers by the Juſtices Warrants, broke open the People's Cheſts, and Multitudes of the People were ſtarved by this means; and Part of the *Iriſh* Remonſtrance was read, which ſaid the People died by thouſands, by reaſon of theſe Oppreſſions.

The Earl of *Strafford* anſwered, that the Intent of thoſe Proclamations was certainly good, being to reform an Abuſe, and promote the Trade and Welfare of the Kingdom. That they were ſigned by the Lord Chancellor *Loftus*, the Lord Primate, the Archbiſhop of *Dublin*, the Chief Juſtices, and other Privy-Councillors, though they were aſcribed only to him: That other abuſes had been reformed by Proclamation before; ſuch as the drawing by Horſe Tails, burning the Straw to ſeparate the Grain from it, *&c.* and that this was to render this Manufacture valuable, which, as it was managed, was worth nothing: That he had a particular regard to the *Engliſh* Nation, in promoting this Manufacture; obſerving the Woollen and Clothing Trade very much encreaſed there, which would in Time be very prejudicial to *England*, if they were not diverted from it by a good Linen Manufacture; and that, in attempting this, he had loſt three thouſand Pounds. That if the Officers had been guilty of any Abuſe, they muſt anſwer for it, though the moſt obnoxious Officer had been produced as a Witneſs againſt him, and upon complaint of thoſe abuſes, the Warrants were recalled: That there was Proof only of the Seizure of one Cart-load of Yarn; and it was ſtrange that this ſhould ſtarve thouſands: And indeed this Fact had no other Proof to ſupport it but common Fame, and had been raiſed and propagated by his Enemies; and that the whole Value of the Linen Cloth, made in his Looms, did not amount to fifteen hundred Pounds, which could not occaſion the Starving of thouſands: And, *Laſtly*, that Actions tending to Oppreſſion, if they had been proved could not amount to Treaſon.

The Managers replied, that a good Intention would not juſtify ſuch Oppreſſions as the ſeizing of Men's Goods, and breaking open their Houſes by Proclamation: But this ſufficiently ſupported their Charge, *That he endeavoured to erect a Government that ſhould depend upon mere Will and Pleaſure*; and it was no Extenuation of his Crime, that he had drawn in others to be Partakers of his Crimes; and that he was anſwerable for the Actions of his Agents, who ſeized the Goods, for his Uſe. 1641. 17 Car. I.

Then the Managers proceeded to the 15th Article, which charges him with levying Money on the People, by Military Force; and this is ſtiled *a levying War againſt his Majeſty and his People.* *Art.* 15.

To ſupport this Charge, *Saviel*, the Serjeant at Arms was produced as a Witneſs, who depoſed, That he received a Warrant from the Lord Deputy's Secretary, under his Lordſhip's Hand, by which he laid Soldiers on Delinquents Lands: That the Method was this; when a Complaint was made to the Lord Deputy, he iſſued his Command to the Party, to appear and anſwer it: And on Oath made, that it was ſerved on the Party, and he refuſed to obey the Order, a Warrant was given to a Meſſenger, to apprehend him; and if he could not be found, or was reſcued out of the Hands of the Meſſenger, a Warrant was given to the Serjeant at Arms, who went in Perſon, or ſent his Deputy four or five times to the Party's Dwelling; and if he could not be had, the Serjeant applied himſelf to the chief Officer of the next Garriſon, and ſhewed him the Lord Deputy's Warrant, who thereupon ſent an Officer, and four or five Soldiers, with their Arms, to his Aſſiſtance; and they lived at free Quarter at the Party's Houſe till he complied, or Satisfaction was made: That the Deponent had laid Soldiers in this Manner on ſeveral Perſons; that the greateſt Number he had ever laid was five, and an Officer; and he generally laid but two or three, uſually Foot-Soldiers.

Other Witneſſes depoſed, that they had ſeen ſuch Warrants ſigned by the Lord Deputy, and that Soldiers had been laid, in Purſuance of them, for not giving Obedience to the Lord Deputy's Orders.

Edmund Berne depoſed, That an Officer, and ten of the Lord Deputy's Guards, were quartered in his Houſe, about twelve Miles from *Dublin*, in the Year 1639. That they threſhed out his Corn, and ſold it; ſpent all his Proviſions, and treated their Women with them; plundered his Tenants, and ſeveral of the Neighbours, and did him 500 *l.* Damage; inſomuch that he was forced to break up Houſe, and ſerve as a Soldier in *Flanders*: That this was for a Debt he refuſed to pay, and might have compounded for five Pounds; and that the Soldiers were quartered upon him, after the Lord Deputy went to *England*.

The Lord *Strafford*'s Secretary, Mr. *Little*, being examined if ever he made out ſuch Warrant for laying Soldiers on *Berne*, by the Lord *Strafford*'s Orders, declared he never knew or heard of any ſuch Warrant.

The Lord *Ranelagh* depoſed, That before the Lord *Strafford*'s Time, it was uſual to lay Soldiers on the Relievers of Rebels; and in caſe of Delinquency, and for levying Contribution-Money, and the King's Rents; but he did not remember any Soldiers had been laid to compel Obedience in civil Caſes, between Party and Party before.

The Managers ſtill urged, That the Lord *Strafford*'s compelling the Subjects by Acts of Hoſtility

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Hoſtility to obey his Orders, was *levying War againſt the King*, and this was Treaſon by 25 *Edw.* III. And by an *Iriſh* Statute of 18 *Hen.* VI. this very Fact of teſſing Soldiers, by Lords or others, on the King's People, was Treaſon.

To this the Earl anſwered, That what had been opened to be ſo extraordinary, was very frequent and ordinary in the Kingdom of *Ireland:* That in all Times, the Officers and Soldiers of the Army had been the chief Inſtruments in executing all the Juſtice of the Kingdom; and indeed the King's Writs could not be executed there, but by their Power and Aſſiſtance. And the Earl calling Sir *Arthur Tyrringham*, and ſome other Witneſſes, they depoſed, that they had known Warrants in the Time of former Deputies, for laying Soldiers in Caſes of Debt, as well as on the Relievers of Rebels, for Contribution-money, and for the King's Rents. And the Lord *Strafford* obſerved, that by Traitors and Rebels in *Ireland*, were meant only idle pilfering Fellows, ſuch as in *England* would be apprehended by a Conſtable; and that it was the Practice of the Deputy and Council to quarter Soldiers, not only on the Party himſelf, but on the Steps (Clans or whole Kindred) of the Rebels. And the Managers admitted, that it was uſual to lay Soldiers on the Steps of ſuch Traitors and Rebels as abſconded, or refuſed to ſubmit to Juſtice; but added, that Uſage would not juſtify it, the Statute of 22 *Eliz.* providing, that if any ſtood out, as Traitors or Rebels, five of the Sept, that bore the Surname, ſhould be fined by the Council-Chamber.

The Lord *Ranelagh* depoſed, that in the Time of former Deputies, when the King's Rents were ſlowly paid, Acquittances were given out of the *Exchequer*, uſually to the Officers of the Army, who quartered Soldiers on the Defaulters till the Money was paid. Whereupon the Earl obſerved, that though it was now proved, and even admitted, that Contribution-money was levied eight Years before his Government, they had made this, Part of the Charge, of his having traiterouſly and wickedly deviſed to ſubdue the Subjects of that Realm, by levying that Money upon them. And, having produced the Lord *Falkland*'s Inſtructions, authorizing him to quarter Soldiers on ſuch as did not pay the King's Rents, he obſerved further, that the aſſeſſing or quartering Soldiers had never been interpreted Treaſon in the Chief Governor of *Ireland*; that it was a uſual Thing, both for levying *Exchequer* Rents, in Caſes of Debt, for Contribution-money, and for Contempts and Diſobedience to the Courts of Juſtice; and he produced a Proclamation, from whence it appeared, that he did not introduce this Cuſtom, but found it in *Ireland*.

As to the Miſdemeanors of the Soldiers in *Berne*'s Caſe, he could not be anſwerable for it, ſince he was not in *Ireland*; neither did it appear the Serjeant had the Warrant from him: And, as to the Warrant given to *Saville*, it would be very hard to make this a Foundation for a Charge of High-Treaſon, without producing the original Warrant, or an atteſted Copy, which might have ſhewn the Limitations and Reſtrictions with which it was granted; and it was ſome Conſolation to him, he ſaid, to ſee this terrible War, which he was charged with levying againſt the King and his Subjects, dwindled to a ſingle Inſtance of quartering three or four Soldiers on one Man. It muſt be a very great Strain that could heighten this Act to High-Treaſon, and make it a levying War upon the King and his Subjects; eſpecially, when it had never been complained of till now.

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That the Serjeant at Arms was a publick Officer, and his Warrant run in general Terms; not for laying Soldiers on one particular Man, but thereby to enforce the Decrees and Judgments of the King's Courts of Juſtice.

Then he called *Henry Dillon* as a Witneſs, who depoſed, that the Serjeant at Arms executed the laſt Proceſs of Contempt, both in the Courts of *Chancery* and the *Exchequer*; and that this was done, as well in Caſes between Party and Party, as where the King was concerned.

After which the Earl proceeded in his Defence, and ſaid, he hoped their Lordſhips would not adjudge him a Traitor for laying (or quartering) two or three Soldiers on ſome refractory Perſons, to bring them to Juſtice, it being the uſual Practice of that Country; and eſpecially, ſince it did not appear to have been done with a Treaſonable or corrupt Intention: That, as his Majeſty's Deputy, he was authorized, in a more than ordinary Manner, to make uſe of the King's Troops for purſuing Rebels, and ſecuring the publick Peace, according to his Diſcretion; and had there been no Precedent for ſuch a Warrant, it could not be charged on him as a Crime; for by his Commiſſion, he was empowered to govern according to the Cuſtoms of that Realm: That the Power of making War and Peace was given to the Lieutenant, by the 10 *Hen.* VII. *cap.* 17. which was after the Statute of 18 *Hen.* VI. they had cited: And further, that as the King was never concluded by any Statute where he was not named, ſo neither was the Deputy, who acted in his ſtead. That the Statute of 18 *Hen.* VI. ſaid, *No Lord, or any other, ſhould*, &c. But this could not affect the chief Governor, who was above the Condition of a Lord: That it expreſſed alſo the bringing of Rebels, &c. which could never be extended to the King's Forces, who came to attach refractory Perſons; and, notwithſtanding that Statute, the chief Governors had always aſſeſſed, or quartered Soldiers, in Caſes of Diſobedience and Contempt, without any Imputation of Treaſon; and conſtant Practice was ever held the beſt Interpreter of the Laws: And if the Fact had been Treaſon by the Statute-Laws of *Ireland*, it was not triable in *England*. It was very hard alſo, he conceived, that abſolete and antiquated Statutes ſhould now be ſought out and revived, only to deſtroy him and his Poſterity, after ſo long and continued a Practice to the contrary.

He obſerved farther, that the Statute of 18 *Hen.* VI. was repealed by the 8th of *Edw.* IV. which enacts, that all the Statutes of *England* ſhall be in Force in *Ireland*; (among which is the 1 *Hen.* IV. which ſays, *That nothing*

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ſhall be adjudged Treaſon, but what is ſpecified in the 25 Edw. III.) He cited alſo the 11th *Eliz.* c. 7. which impowers the Deputy to aſſeſs Soldiers; from whence he inferred, that it could not be Treaſon. There remained nothing more therefore, for him to clear, he ſaid, but that the Fact was not within the Meaning of 25 *Edw.* III. which makes it *Treaſon to levy War againſt the King within his Realm*; and he appealed to their Lordſhips Juſtice, Whether the laying of two or three Soldiers in this Manner, in order to bring a refractory Perſon to Juſtice, could, by any Conſtruction, be deemed a levying War againſt the King and his People; it being done for the Maintenance of the King's Authority, Honour, and Juſtice, and not as an Enemy to him.

The Managers replied, that no Uſage could give a Man Authority to commit Treaſon; and beſides, the Precedents he had cited did not come up to his Caſe: That though he might have a Power to reſiſt Rebels, and make Peace and War, this did not give him Power to ſend Soldiers to make War on his Majeſty's peaceable Subjects, whom he ought to protect: And his alledging, that the Statute of 18 *Edw.* VI. did not extend to him, becauſe it did not extend to the King, was ſuch a Reaſon as the Commons did not expect to hear: That this was to aſſume a Power above-Law, and make himſelf equal to his Sovereign: And he was under a great Miſtake in thinking, he could not be tried in *England* for the Breach of an *Iriſh* Statute. As to the Repeal of that Statute by the *Engliſh* Statute, which provided that nothing ſhould be Treaſon, which was not contained in the 25th of *Edw.* III. they confeſſed they were not prepared to ſpeak to that Point yet, but left it to thoſe who ſhould be appointed to give their Lordſhips Satisfaction in Point of Law.

And as to his Intent; though he had no Deſign againſt the King's Perſon, yet if it was againſt his People, ſuch a levying War was High Treaſon: *Then the Earl deſiring a Receſs for one Day, it was granted, and the Houſe adjourned to* Saturday *the* 3*d of* April.

Art. 16. The Peers being aſſembled on the 3d of *April*, and the Earl brought to the Bar, the Managers proceeded to the ſixteenth Article; which charges him with reſtraining the Subjects from going out of the Kingdom, in order to prevent their petitioning againſt his Oppreſſions and tyrannical Adminiſtration.

For the Proof of which, they produced certain Propoſitions made by the Earl to the Council-Board in *England*; and particularly one dated 17 *Febr.* 1631. of the following Tenor, *viz. That no complaint of Injuſtice or Oppreſſion, be admitted here againſt any, unleſs it appeared the Party firſt made his Addreſs to the Deputy*; and a Proclamation iſſued by the Deputy and Council, and dated 17 *Sept.* 11 *Car.* was read, which *required all Noblemen, Undertakers, and others, who held Eſtates and Offices in* Ireland, *to reſide there and not depart the Kingdom without Licence from the Deputy.*

Then *Richard Wade* depoſed, that the Lord *Eſmond* petitioned the Deputy to go to *England*, to defend a Cauſe wherein the Deputy was Plaintiff; and he refuſed to grant the Petition, though he had obtained the King's Letter, ſignifying his Majeſty's Conſent to it. 1641. 17 Car. I.

The Lord *Roche* alſo depoſed, that the Deputy refuſed him a Licence, to come over to defend himſelf againſt an Information in the *Star-Chamber*, which, he thought, was promoted by the Lord Deputy.

Henry Parry depoſed, that in *April* 1638, his Maſter, the Lord Chancellor *Ely*, was committed to the Caſtle of *Dublin* by the Deputy and Council; and his Lord ſending the Deponent over to *England* to ſolicit for his Enlargement, the Deponent was apprehended by a Warrant of Mr. Secretary *Cook*'s, and forced to give Bond to return to *Ireland*, which he did; and appearing before the Deputy and Council in *Ireland*, was fined 500 *l.* and committed Priſoner to the Caſtle, where he remained till he was utterly ruined; but was never put to anſwer any Complaint in Writing, neither was there any Petition againſt him; but that his Fine was afterwards reduced to 250 *l.* of which he had actually paid 184 *l.*

Mr. *Fitzgerald* depoſed, That the Commons of *Ireland*, in the Beginning of *November* then laſt paſſed, drew up a Remonſtrance of their Grievances, and preſented it to the Lord Deputy *Wainsford*; and ſeeing they ſhould be diſſolved thereupon, conſtituted a Committee to repair to *England*, with a Particular of their Grievances; and on the 12th of the ſame Month, they were prorogued, without any Redreſs of the Things complained of: That the next Day the Committee was ſummoned before the Council-Board, and avowing their Deſign of repairing to *England*, the Lord Deputy *Wainsford* bid them take Notice, that there was a Proclamation iſſued, to reſtrain the Subjects of *Ireland* from repairing to *England*, and charged them on their Allegiance, not to depart, till his Majeſty's Pleaſure was known. A Clauſe of the *Iriſh* Remonſtrance alſo was read in Evidence againſt the Earl, complaining of the Proclamation reſtraining the Subjects of *Ireland* from coming to *England*, and having Acceſs to his Majeſty, in order to procure a Redreſs of their Grievances, as their Anceſtors uſed to do.

To the Charge in this Article, the Earl anſwered, That, notwithſtanding he was accuſed of ſubverting the Laws of *Ireland*, the Law never had ſo free a Paſſage as in his Time: And as to that Part of the Charge, concerning the Inſtructions he procured to prevent all Complaints of Injuſtice and Oppreſſion, he thought it reaſonable the Deputy ſhould be apprized of the Complaint before it was brought over: It muſt be very diſcouraging to the Miniſtry, and very inconvenient for the Subject, to be drawn over hither on every little Complaint, for which they might have Redreſs at Home; and it appeared from the Inſtructions themſelves, that theſe were the Motives, on which they were

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were founded, and not any Deſign in him, to aſſume a greater Authority than became him: That the Proclamation, reſtraining the Subjects of *Ireland* to go abroad without Licence, was warranted by the Statutes of that Kingdom.

Then he produced a Petition to his Majeſty, form *Ireland*, in the Year 1628, ſhewing that, in Reſpect of the Non-reſidence of many of the great Men of that Kingdom, who ſpent their Eſtates abroad, the Nation was impoveriſhed; and therefore they pray, that ſome Order might be taken, that both they, and all Undertakers, who had Eſtates beſtowed on them, for the Improvement and Support of the Kingdom, might make their Reſidence in *Ireland*, one half of the Year at leaſt, and not depart without Licence.

Then he produced his Majeſty's Anſwer and Orders on the ſaid Petition; the Inſtructions to the Lord *Falkland* of the like Tenor, and his Majeſty's Letter for iſſuing the Proclamation complained of *(That none ſhould depart the Kingdom without Licence.)*

Upon this Evidence, the Earl obſerved, That the Proclamation was iſſued by the whole Council, the two Chief Juſtices being preſent, to whom Matters of Law were always referred; and that indeed, he was reſtrained by his Commiſſion from publiſhing this, or any Proclamation, without the Concurrence of the Council. He obſerved alſo, that it was upwards of a Year; after his Majeſty's Letter, that this Proclamation was iſſued, and then it appeared abſolutely neceſſary to reſtrain *O Neal* and *Tirconnel*, who had great Influence over the *Iriſh* Septs, and had Regiments in the *Spaniſh* Service, from going over, and carrying his Majeſty's Subjects into foreign Countries; as alſo to reſtrain the *Popiſh* Noblemen, from going or ſending over their Children and Dependants to *Duoay*, *St. Omers*, and other *Popiſh* Seminaries; and without ſuch an Authority it was impoſſible for the Deputy to take Meaſures for the Security of the Kingdom.

He obſerved alſo, that many Things were now alledged againſt him, which were no part of the Charge, and which he could not be ſuppoſed prepared to anſwer, not being apprized of them before.

That the fouleſt Thing he was accuſed of, ſeemed to be, his defaming the Lord *Eſmond* to the Prejudice of his Cauſe; but, though that Lord was reſtrained from coming over for ſome time, for very juſtifiable Reaſons, he proved, that he was ſuffered to come over time enough to defend his Cauſe, to join in the Commiſſion, and examine his Witneſſes; and that the Lord *Eſmond* actually deferred his coming over, half a Year after he had obtained a Licence, which ſhewed he was in no great Haſte.

That he was unwilling to remember what the Lord *Roche* was charged with in the *Star-Chamber*; but the detaining this Lord was no Part of the Charge, and therefore he was not obliged to anſwer it; and as for others they were only reſtrained from going to *Douay*, *St. Omers*, and other *Popiſh* Seminaries; and ſome had been cenſured by the Council-Board for other Contempts, and not for departing the Realm without Licence, as had been charged: And as many of theſe things were done by the Authority of the whole Council, he conceived, they ought not to be charged ſingly upon him: He obſerved alſo, that the Criminals themſelves, who had been cenſured, were produced as Witneſſes againſt him; but if the Judge was to be condemned on the Teſtimony of the Party puniſhed, no Man would venture on the Office of a Judge.

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The Earl then called the Lord *Robert Dillon*, as a Witneſs, who depoſed, that it being ſuſpected the Lord *Eſmond*, had employed ſome Aſſaſſins to cut off Sir *Walſingham Coke*, the Council reſtrained him from going over, till the Judges had determined whether the Fact was Treaſon or not; and the Earl demanding, if the Lord *Dillon* remembred the Sentence againſt *Parry*, the Managers inſiſted, his Lordſhip might not be examined as to that, becauſe he was one of the Council, and it was asking the Judge whether the Sentence was juſt. To which the Earl anſwered, that it was as equitable to examine the Judge as the Delinquent; but he was not ſuffered to be examined, however, as to this.

Sir *Adam Loftus* alſo depoſed, that the Lord *Eſmond*, was detained on the Evidence of a Rebel in *Dublin* Caſtle, who charged that Lord with employing certain Rebels and Out-laws, to lie in Ambuſh for Sir *Walſingham Coke*, near his Houſe; but the other Witneſſes not ſupporting his Teſtimony, the Lord *Eſmond* was diſmiſſed as ſoon as the Examination was finiſhed, which laſted about three Weeks or a Month.

The Earl concluded his Defence to the Charge in this Article with obſerving, as on the reſt, that there was no Treaſon in it: And as to the Matter of Miſdemeanor, he ſaid, he hoped their Lordſhips would give him time to examine his Witneſſes, and that his Counſel might be heard, and then he did not doubt but he ſhould acquit himſelf, as became him.

The Managers replied, It appeared the Earl had taken Cauſes from the ordinary Juriſdiction, and brought them before him: And that he had procured Inſtructions to debar the Subject of all Acceſs to his Majeſty with Complaints of his Injuſtice and Oppreſſion, and to prevent their reſorting to Popiſh Seminaries: That what was applicable to Reſidence for the Defence of the Kingdom, he had made a Reaſon for reſtraining all Reſort to *England*. And as to the Earl's Obſervation, that there was no Treaſon in the Matter, they gave the ſame Anſwer as before; that the Multiplication of Acts, all tending to an Arbitrary Power, made the Treaſon.

Then the Managers proceeded to the nineteenth Article; which charges the Earl with framing a new and unlawful Oath, and impoſing it on the *Scots* in *Ireland*: To prove *Art.* 19.

which

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which Sir *James Montgomery* depoſed, that the Earl ſent for the *Scots* Nobility and Gentry in *Ireland*, and propoſed to them their petitioning that an Oath might be adminiſtered to them, as a Teſt of their Loyalty; and that, thereupon, the Biſhop of *Rapho* was appointed to draw up a Petition, and it was drawn up accordingly; in which the *Scots* were made to expreſs their Deteſtation of the Rebellion in *Scotland*, and of their entering into an unlawful Covenant, and to deſire the Deputy to adminiſter an Oath to them, whereby they might have an Opportunity of vindicating themſelves; and the Petition being preſented to the Deputy and Council, an Act of State was made for framing an Oath, and tendring it to all thoſe of the *Scotiſh* Nation of *Ireland*. By this Oath they ſwear to obey the King, and defend his Regal Power; that they will not bear Arms againſt him, or proteſt againſt his lawful Command; and that they will not enter into any Covenant, Oath, or Bond of mutual Defence, without his Majeſty's legal Authority.

That the Lord Deputy himſelf adminiſtered the Oath to all the Nobility and Gentry that were preſent; and, in *May* following, Commiſſions were ſent into the Country, to adminiſter the Oath to all of that Nation, above ſixteen Years of Age, Men, Women, and Children, and to certify the Names of the Refuſers: That Meſſengers were diſpatched to apprehend thoſe who refuſed the Oath; that many fled into *Scotland* thereupon, and others abſconded, leaving their Goods, their Houſes, and the Corn growing on their Lands: And Sir *John Clotworthy* depoſed to the ſame Effect.

Richard Salmon, School-Maſter, depoſed, that Mr. *Stuart* being proſecuted in the Court of *Star-Chamber*, in *Octob.* 1639. for not taking the ſaid Oath, ſaid, he ſcrupled taking the Oath, becauſe it ſeemed to bind him not only in Point of Allegiance, but in Point of Eccleſiaſtical Duties; and the Earl replied, he made a right Judgment, for the Oath was deſigned to bind him to be obedient to the Eccleſiaſtical Ceremonies of the Church eſtabliſhed by his Majeſty; and that, whoever would not be obedient to them, he would proſecute them to Blood.

That the Earl ſaid, at the ſame Time, *Theſe People almoſt made him mad, and cauſed him to forget himſelf; that they were Traitors and Rebels; and if his Majeſty would ſend him back to that Government, he would eradicate, Root and Branch, even all that Nation out of the Kingdom of* Ireland, *ſaving ſuch Lords and others that had taken the Oath.* That a Fine of 5000 *l.* was impoſed on Mr. *Stuart* and his Wife, 3000 *l.* on each of his Daughters, and 3000 *l.* on Mr. *James Gray*, who was not worth an hundred Pounds; *John Loftus* gave the ſame Evidence of the Sentence in the *Star-Chamber*, and that the Deputy ſaid, he wanted Words to expreſs the Heinouſneſs of the Cauſe: That he was to leave his Sword, but if it pleaſed his Majeſty to return him thither again, he hoped to root up, Stock and Branch, ſuch as would not conform themſelves to the Diſcipline of the Church.

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To the Charge in this Article, the Earl anſwered, Their Lordſhips would obſerve in what a dangerous Poſture the King's Affairs were, when the Proclamation iſſued for taking this Oath, in *May* 1639. that the Council of State in *Ireland* were apprehenſive the *Scots* in that Kingdom, who were not fewer than an hundred thouſand Men, might join with the Covenanters; for one of them was found to be in a Plot to deliver up the Caſtle of *Knock-fergus* to them, of which he was convicted and executed: And the Lord *Robert Dillon*, being called as a Witneſs, depoſed, that about the Time above-mentioned, Intelligence was brought from the North of a Conſpiracy among the *Scots*; whereupon it was concluded at the Board, to adminiſter an Oath to that Nation, to prevent their treating with the Covenanters; and the *Scots* Gentlemen being ſent for, they did not expreſs any Reluctance at taking the Oath, when it was tendered them, which Sir *Adam Loftus* atteſted.

The Earl added, that none but Sir *James Montgomery*, who was produced as a Witneſs againſt him, made any Scruple about taking it when it was propoſed; and that the like Oath was tendered in *England* about the ſame Time: And he ſubmitted it to their Lordſhips Wiſdom, what Offence this could be in a Deputy of *Ireland*, in ſuch an Exigency, to tender this Oath, in order to ſecure the Subject's Allegiance, and the publick Peace of the Kingdom, and eſpecially when he had a Letter from his Majeſty, authorizing him to make a Trial of the Fidelity of the *Scots* in *Ireland*, by adminiſtering to them an Oath of the aforeſaid Tenor: That he never diſcovered this Letter before; but he apprehended it to be a full Vindication for him; nor did he know that none might adminiſter an Oath but by Authority of Parliament; and if he had offended ignorantly, as it was in Obedience to his Majeſty, he hoped he ſhould not be puniſhed for it; however, were it to do again, being informed as he then was, he muſt obey, and had rather ſuffer by obeying his Majeſty, than diſpute his Commands of that Kind. As to the Sentence againſt Mr. *Stuart*'s Family, the whole Court of *Star-Chamber* were unanimous in it, and the Fines were ſet before he came to vote, though he concurred with the reſt; that though the Fines were but ſuitable to the Offence, very little was paid or required of them, and they might have been pardoned next Day on ſubmitting to take the Oath: That the Refuſers of the Oath of Allegiance, which differed but little from this, incurred a *Præmunire*, being the Loſs of Liberty and all they had in the World; ſo that the Fines could not be deemed exceſſive, and the Oath had no View to Eccleſiaſtical Affairs, as ſome of the Witneſſes had erroneouſly ſworn.

Nor did he ever ſay, that the *Scotiſh* Nation were Rebels, and he would extirpate them, *&c.* he had too great a Regard for that Kingdom, his Majeſty's Native Country, and it was an Expreſſion only fit for a Man that was out of his Wits; He never received a perſonal

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perſonal Wrong from any of that Nation, or had any Animoſity againſt them; and would produce ſome Witneſſes to ſhew that he did not uſe any ſuch Expreſſions, but ſpoke, even of the Faction in *Scotland*, in milder Terms.

Then Sir *Philip Manwaring* depoſed, That he ſat in the *Star-Chamber* the Day, the Sentence paſſed on *Stuart*, *&c.* and that the Earl told him, ſince he carried that Name, he was ſorry he ſhould be almoſt the only Man that ſhewed himſelf diſobedient to His Majeſty; adding that he knew there were, among the *Scotiſh* Nation, many gallant and worthy Perſons, and had great Experience of their Loyalty; but there was a Faction amongſt them, that he ſhould endeavour to reduce to the Obedience they owed their Sovereign: And that he heard none of thoſe Words, *Root and Branch*, or *Stock and Branch*. Sir *Adam Loftus* alſo depoſed, That he was preſent at the Cenſure of *Stuart*, and heard none of thoſe Words, though Lord *Strafford* was charged with reflecting on the *Scotiſh* Nation. And that, being at Dinner with the Lord Deputy, and ſeveral Perſons of Honour that Day, he heard Mr. *Wainsford*, Maſter of the Rolls, expreſs his Satisfaction to the Lord Deputy, in that he had uſed ſo much Caution in his Speech on that Occaſion; and had avoided all ſuch Words as might caſt any Reflection on the *Scotiſh* Nation in general, and only cenſured the Faction in that Kingdom. And the Earl concluding his Defence to this Article, ſaid, He hoped his Intentions to ſerve His Majeſty, in this Inſtance, would procure an eaſier Judgment from their Lordſhips, than that of High-Treaſon.

The Managers replied, that the Earl, in juſtifying his Offence, and ſaying he would do it again, if he had the ſame Command, though he had been told in that great Preſence that it was contrary to Law, was a high Aggravation of his Crimes: That a new Oath could not be impoſed, but by Parliament, and the Oath of Allegiance would have been a ſufficient Security in this Caſe; though nothing would content this Lord, but framing New Oaths, and maintaining his Authority was equal to an Act of Parliament; and although his Majeſty would not command any thing contrary to Law, it appeared that the Lord *Strafford* his Miniſter, had publiſhed ſuch Commands, in the King's Name, as were not juſtifiable by Law; which gave the *Scots* ſufficient Reaſon to be cautious in ſwearing they would ſubmit to all the King's Royal Commands; and the Lord *Strafford*'s miſinforming his Majeſty, and thereby procuring that Letter to authorize him to adminiſter the Oath was but an Aggravation of the Offence: That he had alſo exceeded the Power given him by his Majeſty's Letter, by ſetting Fines on the Refuſers.

Then the Managers demanded of Sir *John Clotworthy*, if he could give any Inſtances of Perſons flying from their Habitations to avoid the Oath; and Sir *John* mentioned about half a Dozen, and ſuggeſted there was no real Plot to betray *Knockfergus* Caſtle; it was a State Trick: The Miniſtry wheedled the Fellow to write that Letter concerning it, for which he was hanged. 1641. 17 Car. I.

Then the Managers concluded their Reply to this Article, with their former Obſervation; That as the Earl had threatned to make an Act of State equal to an Act of Parliament, he was now as good as his Word; for no Authority could impoſe an Oath, without the Concurrence of the three Eſtates. This Day's Hearing being over, the Earl repreſented to their Lordſhips, that all he had in the World was ſeized on; he had no Money to ſubſiſt on, but what he borrowed; and how his Wife and Family found Bread in *Ireland*, he could not tell: He moved their Lordſhips therefore, to take this Caſe into their Conſideration, that the reſt of the Peerage might not ſuffer by this Uſage of him; for he thought it ſtrange that a Peer ſhould be in a worſe Condition than the meaneſt Man would have been in, in ſuch a Caſe; under pretence of charging him with Treaſon, which it ſeemed to be admitted could not be made out but by ſtrained Conſtructions.

To which Sir *John Clotworthy* replied, That the Earl had ſtill a fair Eſtate in *Ireland* of a thouſand Pounds *per Annum*, which the Commons had not ſeized. The Earl anſwered, he had but a thouſand Pounds a Year there in all; and he had a Family of two hundred and Sixty People, who could not eaſily be maintained out of it: Whereupon their Lordſhips directed the Earl to petition them.

Thus far the Commons went upon one Article at a Time; but ſaid, for the future they ſhould take the Liberty to conſider them together, as they related to one another, and not in the Order they lay; which the Earl oppoſed ſtrenuouſly; but was over-ruled by the Lords, who told him, the Commons were at Liberty to proceed on them promiſcuouſly, or in what Method they pleaſed.

On *Monday*, the fifth of *April*, the Commons proceeded to maintain the 20th, 21ſt, 22d, 23d, and 24th Articles. *Art.* 20, 21, 22, 23, 24.

In theſe five Articles the Earl is charged with inciting his Majeſty to make War on the *Scots*; with perſuading his Majeſty to call a Parliament, in order to break with them, and raiſe Supplies by Force on his Subjects, for the Maintenance of the *Scotiſh* War; with procuring the Parliament of *Ireland* to declare they would aſſiſt in the War againſt the *Scots*; and with raiſing a Popiſh Army there for the Deſtruction of *England*. He is charged alſo with falſly telling his Majeſty the Parliament refuſed to ſupply him, and thereby procuring a Diſſolution; and with ſaying to his Majeſty, that, having tried the Affections of his People, he was abſolved from all Rules of Government, and might do every thing that Power would admit; and with declaring, that the Parliament had forſaken the King, and given him Advantage to ſupply himſelf another Way; and that he was not to ſuffer himſelf to be maſtered by the Frowardneſs of the People.

Mr. *Whitlock*, the Manager, opened theſe five Articles, and obſerved, that they were now

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now about to prove the Earl's Deſign of ſubverting the Government both of *England* and *Scotland*, and of bringing in an Army upon them to force them to ſubmit to arbitrary Power; and that they ſhould begin firſt with *Scotland*.

Then the Earl *Traquair* was ſworn, and depoſed, that the Lord *Strafford* ſaid before his Majeſty, *That the unreaſonable Demands of Subjects in Parliament was a Ground for the King to put himſelf in a Poſture of War, or to that Effect.* And the Managers demanding, that this Lord's Examination before the Committee, might be read, the Lord *Strafford* oppoſed it; for that an Examination was never known to be read where the Witneſs was preſent. Then the Managers produced the Examination of the Earl of *Morton*, who was ſuch; and the Lord *Strafford* objected to the reading it, becauſe he ought to be examined *viva voce*, and he had no Way of croſs-examining him this Way: But the Lord High-Steward determined, that where the Witneſſes could be produced, they ſhould give their Evidence *viva voce*; but where they could not, their Examinations ſhould be read.

Then Earl *Morton*'s Examination before the Committee was read; wherein he depoſed, that the Earl of *Strafford* ſaid, the Night before the great Meeting of the Peers at *York*, that the unreaſonable and exorbitant Demands made by the *Scots* in their Parliament, was a ſufficient Ground to make War upon them; and that the King need not ſeek for any other Grounds for it; and that on the Earl of *Traquair*'s firſt relating the *Scots* Demands to the King, the Lord *Strafford* ſaid, thoſe Demands were not Matter of Religion, but ſuch as did ſtrike at the Root of Government, and ſuch as he thought were fit for his Majeſty to puniſh by Force, or to that Effect.

Sir *Henry Vane* depoſed, That ſoon after the laſt Parliament, the Lord *Strafford* delivered his Opinion for an offenſive War. Then the Earl of *Northumberland*'s Examination was read, importing, that the Lord *Strafford* adviſed the King to go on vigorouſly with an offenſive War againſt the *Scots*.

The Biſhop of *London* depoſed, That his Majeſty obſerving that ſome of the *Scots* Demands were prejudicial to that Crown, the Lord *Strafford*, and the other Lords of the Council, adviſed, that if the *Scots* inſiſted on thoſe Demands, and would not recede from them, his Majeſty ſhould prepare to reduce them by Force; and that the whole Council giving their Opinion for an offenſive War, the Lord *Strafford* was for carrying the War into *Scotland*: And though there was ſome Difference of Opinion, as to the Method of carrying it on, they all agreed in the main.

Sir *Nicholas Barnwell*, depoſed, That Sir *Robert Loftus* ſeized ſome *Scotiſh* Ships in *Ireland*, and the Deponent heard him ſay, he had a Warrant for it, but he could not ſwear the Warrant was from the Lord *Strafford*.

Thus the Managers concluded their Evidence of the Earl's Deſign of ſubverting the Government of *Scotland*, and then produced Witneſſes, to ſhew he had the ſame Deſign as to *England*.

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Then the Examination of the Lord Primate of *Ireland* was read, who depoſed, That diſcourſing with the Lord *Strafford*, concerning the levying Money on the Subject, his Lordſhip ſaid, he agreed with thoſe in *England*, who thought that in Caſes of imminent Neceſſity, the King might make uſe of his Prerogative, to levy what Money he needed; but his Majeſty was firſt to try his Parliament, and if they ſupplied him not, then he might uſe his Prerogative, or to that Effect.

The Lord *Conway* depoſed, that diſcourſing with Lord *Strafford*, how the Forces ſhould be paid, he ſaid, he made no doubt but the Parliament would ſupply the King, and give him twelve Subſidies; but if they ſhould not, the Cauſe was very juſt; and if the Parliament would not ſupply the King, he was juſtified before God and Man, if he ſought means to help himſelf, though it were againſt their Wills, or to that Effect.

Sir *Henry Vane* depoſed, That he heard Lord *Strafford* ſay, that if the Parliament ſhould not ſucceed, he would be ready to aſſiſt his Majeſty any other Way, or to that Effect.

Then they proceeded to give Evidence of what the Lord *Strafford*'s Friends had been heard to ſay.

Sir *Robert King* depoſed, That diſcourſing of the *Scotiſh* War, with Sir *George Ratcliffe*, Sir *George* ſaid, the King could not want Money, for he had an Army of 30000 Men, and 400,000 *l.* in his Purſe, and a Sword by his Side; and if he would want Money, who could pity him? The Lord *Ranelagh* depoſed, That he heard Sir *George Ratcliffe* ſay the ſame Words; and the Deponent objecting the Difficulty of raiſing Money, while the *Scotiſh* Army was on Foot, Sir *George* anſwered, We can make Peace with the *Scots* when we liſt; but that is the worſt of Evils.

Sir *Thomas Barrington* depoſed, That he heard Sir *George Wentworth* ſay, this Commonwealth is ſick of Peace, and will not be well, till it is conquered again.

The Earl of *Briſtol* depoſed, That Diſcourſing with the Lord *Strafford*, of the Diſtractions of the Times, and propoſing the Summoning a Parliament, his Lordſhip ſaid, he did not diſlike the Propoſal; but it was not adviſable at that Time, for the preſent Dangers of the Kingdom were ſo preſſing, they would not admit of ſo ſlow and uncertain a Remedy as a Parliament was. That the Parliament had in the great Diſtreſs of the King and Kingdom, refuſed a Supply; and therefore the King muſt provide for the Safety of the Kingdom, by ſuch Ways as he in his Wiſdom ſhould think fit, repeating that Maxim, *Salus Reipublicæ ſuprema lex*; adding, that the King was not to ſuffer himſelf to be maſtered by the Diſaffection and Stubbornneſs of ſome particular Men, and he conceived he meant Members of Parliament.

Another Part of the Earl of *Northumberland*'s Examination was read, wherein he confirms what ſome of the former Witneſſes had ſaid, and adds, that the Forces, which were to come

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out of *Ireland*, were to land in the Weſt of *Scotland*, as the Lord *Strafford* declared in the King's Preſence; but he never heard that thoſe Forces, or any other, were to be employed in this Kingdom, to compel or awe the Subjects of this Realm, to yield to ſuch Taxes or Charges, as ſhould be impoſed on them by his Majeſty; but he believed, by ſome Diſcourſes of the Lord *Strafford*'s to the King, that it was intended to raiſe Money by extraordinary Ways.

Sir *Henry Vane* depoſed, That when the *Scotiſh* War was under Debate before his Majeſty, the Lord *Strafford* ſaid, *Your Majeſty having tried all Ways and been refuſed; in a Caſe of this extreme neceſſity, and for the Safety of the Kingdom, you are acquitted before God and Man: You have an Army in* Ireland; *you may employ it to reduce this Kingdom:* Which Words were ſpoken, at a Committee for *Scotiſh* Affairs; but whether they were meant of *England* or *Scotland*, he would not pretend to ſay.

Upon this Evidence, the Managers obſerved, that no other Kingdom could be intended but *England*; the Words being ſpoken here, and he having juſt before ſpoken of the King's trying his Subjects here, and their having refuſed him; concluding that they conceived the Charge in theſe *Articles* fully made out.

The Earl anſwered, that it appeared from their own Evidence, that he delivered the ſame Opinion, in relation to the *Scotiſh* War, as the reſt of the Council did; and, if it was neceſſary, he could ſhew that he gave no Vote at all, but only delivered the Senſe of the Board: And as to thoſe Words that the unreaſonable Demands of Subjects in Parliament, was a Ground for the King to put himſelf in a poſture of War; this could be no great Crime, after it had been reſolved in the Council of *England*; and for that other Expreſſion, that it was not matter of Religion, that was the Buſineſs, but they ſtruck at the Root of Government, and were to be reduced by Force, he believed every Man was of Opinion, that if they ſtruck at the Root of Government, they ought to be reduced by Force; nor did he think it any Crime, to ſay the King might uſe that Prerogative the Law had conferred on him, any more than his ſaying, If the King was denied in juſt and lawful Things, he might juſtify his ſeeking Means to help himſelf, though it were againſt their Will; nor did he think himſelf, or Mr. Treaſurer, who appeared as Evidence againſt him, to blame, for ſaying, that if the Parliament ſhould not ſucceed, they would be ready to aſſiſt his Majeſty any other Way, becauſe it muſt be preſumed *a Lawful Way*, or his Majeſty would not require it.

That the Parliament of *Ireland* went very readily into the Supply for the *Scotiſh* War, and needed not his Influence to bring them into it: And as to his conſpiring to employ the *Iriſh* Army, for the Deſtruction of *England*, he had as little Inclination to enſlave himſelf, and his Poſterity, as another Man; and the Proof they brought of it, was the weakeſt that ever was offered, namely, the Sayings of other Men, that had no Relation to any thing he had ſaid, or done.

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Then he deſired that Part of the Lord *Northumberland*'s Examination, might be read again; where he ſays, The *Iriſh* Army was deſigned for *Scotland* and not for *England*.

The Marquiſs of *Hamilton* alſo depoſed, That the *Iriſh* Army was to land near *Ayre*, in *Scotland*; and that he never heard there was any Deſign of bringing them to *England* at all. And ſeveral other general Officers depoſed, to the ſame Effect; and, that the Magazines were intended to be made on the Borders of *Scotland*.

The Earl obſerved, on the Evidence that had been produced, That they had examined and ſifted his neareſt Relations and Domeſticks. His Houſe, his Table, and every Place, had been ſearched for Evidence againſt him: And he was charged with the Speeches of his Brother, and others, for which he could not be anſwerable. But he believed, if they would ſuffer his Brother to be examined, he could clear himſelf of what they charged him with: But Sir *George Wentworth* offering to ſpeak, and the Managers objecting againſt it, the Lords ruled that he ſhould not.

The Earl ſaid, he was ſtill of Opinion that, in Caſes of extreme Neceſſity, and, where there was not Time to call a Parliament, the King, as the common Parent of the Country, might uſe what Power God had given him to preſerve himſelf and his People; but that this was very different from ordinary Caſes, to which the Managers applied the Words.

As to thoſe Words, that the Parliament, having denied the King, had given him an Advantage to ſupply himſelf other ways; he did not apprehend any Thing amiſs in them, if by Ways were meant juſt and lawful Ways, as it was to be preſumed he intended.

And, for his ſaying His Majeſty had an Army in *Ireland*, which he might employ to reduce this Kingdom, he deſired the Lord Treaſurer might be examined again, if ever he heard him ſay this to the King? To which he anſwered, he never heard him ſay any thing like it. And, being asked by the Managers, if he never heard the Lord *Strafford* ſay, the King was looſe, and abſolved from all Rules of Government, he anſwered, he did not remember any Thing of it.

The ſame Queſtions being put to the Lord *Cottington*, he anſwered, he never heard the Earl uſe either of thoſe Expreſſions; but he had heard him ſay, The King ought to ſeek out all due and legal Ways, and employ his Power and Prerogative, *caſte, & candide*.

Then the Earl obſerved, that only Sir *Henry Vane* atteſted theſe Words, *That His Majeſty had an Army in* Ireland, *which he might employ to reduce this Kingdom*; and, that it was highly probable he was miſtaken, becauſe all the reſt of the Committee for *Scotch* Affairs, had been examined, and they remembred nothing like them, and he proteſted he never ſpoke them: And, Sir *Harry* being

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being a ſingle Witneſs, could not convict him of Treaſon, if he had ſpoken them: He deſired alſo, the Earl of *Northumberland*'s Examination might be read again, where he ſays, The Lord *Strafford* declared that his Majeſty might uſe his Power when the Kingdom was in Danger, or on unavoidable Neceſſity; and that he often ſaid, Power was to be uſed *caſte & candide*; and an Account thereof ſhould be given to the Parliament, that they might ſee it was only employed to that Uſe, and that this Kingdom could not be happy, but by a good Agreement between the King and his People in Parliament.

The Earl then obſerved, that theſe Words were not ſpoken wantonly, or unneceſſarily, but in full Council; where he was by the Duty of his Oath obliged to ſpeak according to his Conſcience: And, if he had forborne to ſpeak what he apprehended to be for the Advantage of the King and his People, as he conceived this to be, he had been perjured; though he was charged now as a Traitor, for ſpeaking them. In theſe Circumſtances he was not afraid of them, that could kill the Body, he thanked God; and, if he muſt offend God or Man, he ſhould ſoon determine his Choice: And, whatever ſhould befall him from popular Rage, or his own Weakneſs, he ſhould ſubmit to the Will of the Almighty; and, to their Lordſhips Honour and Juſtice.----- Then he obſerved further, that he was charged only with delivering an Opinion; and, though Opinion might make an Heretick, he ſaid, he never heard before that it would make a Traitor: That if it were once admitted, that a Privy-Councillor, delivering his Opinion under an Oath of Secrecy, and Faithfulneſs at the Council-Table, ſhould, upon a Miſtake of the Law, be tried for Treaſon, and himſelf, and his Poſterity, attainted and ruined; no Perſon of any Quality or Fortune would venture to be a Privy-Councillor, on ſuch unſafe Terms; and entreated their Lordſhips ſo to judge of his Caſe, as not to bring any Inconveniences on themſelves: That, if they would weigh the Words with which he was charged, there was nothing but what was loyal, juſt, and honeſt in them; if they were not ſo diſcreet as they ought to have been.

The Managers replied, That the *Scots* Demands did not ſtrike at the Root of Government; for, they had ſince been enacted by the Parliament of *Scotland*, and his Majeſty: That his repreſenting they ſtruck at the Root of Government, when they did not, was what he was charged with: And that Words, adviſing and counſelling the Deſtruction of the King and Kingdom, were Treaſon, though nothing was done in Purſuance of them.

Then the Earl deſiring he might have a Day's Reſpite to recover himſelf, being much fatigued with continuing his Defence this Day, from Eight in the Morning to Five in the Evening, their Lordſhips adjourned to *Wedneſday*, the 7th of *April*.

The Court ſitting again the 7th of *April*, and the Earl brought to the Bar, the Managers went upon the 25th Article, which charges him with adviſing His Majeſty to levy Ship-Money vigorouſly, with threatning the Sheriffs, and the Lord Mayor and Aldermen of *London*, for not levying it; and with threatning the Lord Mayor and Aldermen to lay them by the Heels, and hang ſome of them for refuſing to lend the King Money. 1641. 17 Car. I.

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The Lord Treaſurer depoſed, That the Earl adviſed the going on vigorouſly to levy Ship-money, after the laſt Parliament broke up; and Mr. *Wiſeman* depoſed, That he ſaid to the Lord Mayor and Aldermen, they would never do their Duties till they were put to Fine and Ranſom: And that he ſaid to his Majeſty, you will have no good of this Man, meaning the Lord Mayor, till he is laid by the Heels.

The Earl of *Berkſhire* depoſed, That the King propoſing to the Aldermen the City's lending him a Sum of Money on good Security, at 8*l. per Cent*, and commanding them to give in the Names of ſuch as were able to lend, they refuſed: Whereupon the Lord *Strafford* ſaid, Gentlemen, in my Opinion, you may be liable to Fine and Ranſom.

Garaway, the Lord Mayor, depoſed, that having repreſented the Difficulty of levying Ship-money to His Majeſty, it was ill taken; and the Lord *Strafford* ſaid, Sir, you will never do good on this Man, till you have made him an Example; unleſs you commit him, you will do no good upon him; And, that waiting on his Majeſty again about the Loan, the Lord *Strafford* ſaid, Sir, you will never do any good on theſe Citizens of *London*, till you have made Examples of ſome of the Aldermen. Unleſs you hang up ſome of them, you will do no good upou them.

The Earl anſwerd, that he acknowledged his adviſing and levying Ship-money, which had been levied ſeveral Years before, and adjudged legal by the Judges; and that he did ſay, the Lord-Mayor and Aldermen were liable to be fined for refuſing to lend his Majeſty Money on good Security, and ſuch an Exigency of the State; but denied he ever ſaid, there will be no good done on the Citizens, till you have hanged ſome of them up; and there was only *Garaway*'s Teſtimony, a ſingle Witneſs, and a prejudiced Perſon; and it was ſtrange that neither His Majeſty, nor any of the Council, ſhould remember any thing of them. And laſtly, if he did ſpeak them, they fell very ſhort of Treaſon.

The Managers replied, They hoped their Lordſhips would not paſs by thoſe haſty Words, which were conformable to his Actions for many Years; and as to the Objection of a ſingle Teſtimony, ſeveral Circumſtances indeed were proved by ſeveral Witneſſes; but they had all a Tendency to the ſame End, and made good the general Charge.

Then they proceeded to the 26th Article, which charges the Earl with adviſing his Majeſty to ſeize the Money in the *Mint*, and debaſe the Coin; and that he procured 180,000*l.* to be ſeized; and when the ill Conſequences of this Conduct were repreſented to the Lord *Strafford*, he ſaid, the City had dealt undutifully with his Majeſty, and were more ready to help the Rebels than the King, and they might thank themſelves for it. *Art.* 26.

The Evidence to ſupport this Article was *Robert Edwards*, who depoſed, That deſiring the

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the Earl to be a Means for reſtoring the Money that was ſeized in the Mint, he anſwered, if they did ſpeed amiſs, they might thank themſelves; they were more ready to hold with Rebels, than to give his Majeſty the 14000 *l.* that was due to him for Ship-money; that they dealt very unthankfully and undutifully with the King; and though this ſeemed a ſtrange Buſineſs here, it was uſual beyond Sea, for People to have their Goods taken from them by Command.

Anthony Palmer depoſed, That waiting on the Earl with ſome other Officers of the Mint, to repreſent the ill Effects of debaſing the Coin, he was diſſuaded from it; but he read Part of a Letter from *France*, ſhewing that the *French* King had appointed Officers to inſpect People's Books of Accounts and Eſtates there, that the King might know what to demand of them; and thoſe who refuſed to pay the Sum demanded, were made to pay it by Force: And the Deponent thought the Earl mentioned it as a Precedent for *England*.

To this Part of the Charge, the Earl anſwered, that they had produced no Proof of his adviſing the Debaſing the Coin, or Seizing the Money in the Mint; on the contrary, their own Witneſſes had proved that he agreed not to debaſe the Coin; but he acknowledged he ſaid the City dealt undutifully by his Majeſty, who reſiding amongſt them, and having conferred ſo many Favours on them, yet they refuſed him the Loan of 100,000 *l.* on good Security; and ſince they charged him chiefly with Words that expreſſed his Zeal for his Majeſty's Service, he looked upon it as an Argument of his Innocence; and that they had nothing worſe to accuſe him of.

That he never had any thoughts of making the Practice in *France*, of levying Money by Force, a Precedent for *England:* And *Palmer*, who teſtified he ſpoke to that Effect, could not remember the Words; and he appealed to their Lordſhips, if he ought to be condemned for Words, which the Witneſs could not remember particularly, and who might be miſtaken in the Senſe of them, as he averred he was in this Caſe; for the Words he ſpoke, on reading the Letter from *Paris*, were, God be thanked they had a pious King, that thought of no ſuch Methods, and that he ſaid no more: And laſtly, that there was but a ſingle Witneſs of the Words.

The Managers replied, that the Lord *Strafford*'s retorting upon the Citizens in that Manner, when they only deſired their Money out of the Mint, was a great Grievance, and not to be ſlighted; and that his Lordſhip had given no anſwer to thoſe Words, that the City was more ready to help the Rebels, than his Majeſty. And though his Lordſhip looked upon it as an Argument of his Innocence, that he was only charged with haſty Words; ſome Words might amount to Treaſon, and be of more pernicious Conſequence than Actions; that his adviſing his Majeſty to bring over an Army of *Iriſh*, was deſtructive both of King and People; and while he incited his Prince by falſe Inſinuations, to tyrannize over his Subjects, he did not only abuſe his Goodneſs for the preſent, but make him the Inſtrument of Ruining their Poſterity: Nor did the Earl reſt in Words, for four of the Aldermen were committed that very Day they gave their Anſwer about the Loan; and it was eaſy to conjecture by whoſe Advice it was done.

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The next Article they proceeded upon, was the 27th, which charges the Earl with Impoſing a Tax of Eight-pence a Day, for the maintenance of every Soldier of the Trained-bands, in the County of *York*.

To prove this Charge, they produced a Warrant from the Vice-Preſident of *York*, to Sir *Edward Osborn*, reciting, that the *Scots* having taken *New-Caſtle*, and being on their March to *York*, he was required by his Majeſty's ſpecial Command, to raiſe by the Port Conſtable, or otherwiſe, twenty Shillings and Eight-pence for each common Soldier belonging to certain Towns, and ſend the ſame to *York*, to be delivered to the Colonel, for the Payment of the ſaid Soldiers; and likewiſe to charge and command all, and every Perſon, who were to find private Arms, to contribute thereto forthwith, and to ſend the like Sum to *York*, to be diſpoſed as aforeſaid; and in Caſe any of them refuſed to contribute, he was commanded to certify the Names of ſuch Refuſers, that they might be brought to *York* to ſerve in Perſon, and be ſeverely puniſhed, according to the Quality of ſo high an Offence; ſeeing the Safety of his Majeſty's Perſon, and the Safety of the Kingdom, depended on it; and this he was not to fail exerciſing, on Peril of his Life.

Sir *Henry Cholmley* depoſed, That he heard the Lord *Strafford* ſay, in the Preſence-Chamber at *York*, it had always been the Cuſtom, that the private Men ſhould ſerve in Perſon, or maintain the Charge of thoſe that ſerved for them; and addreſſing himſelf to his Majeſty, added, Sir, if you pleaſe, Mr. Vice-Preſident may ſend out Warrants to that Purpoſe.

William Dowſon depoſed, That Mr. *Yaworth*, Serjeant-Major to Sir *William Pennyman*, came with four Muſqueteers to the Lordſhip of *Egton*, and gave a Warrant to the Conſtables for collecting the Money aſſeſſed; and that the Muſqueteers went with the Conſtables from Place to Place to levy the Money; and that the Deponent was forced to ſerve in Perſon in Sir *William Pennyman*'s Regiment, becauſe he did not pay the Sum required.

Sir *William Ingram* depoſed, that the Lord *Strafford* ſaid, the private Men muſt maintain their Soldiers after the Rate of Eight-pence a Day; and if they did not, he would commit them, and it ſhould be raiſed out of their Eſtates: That the Earl ordered the Deponent to ſpeak to the Conſtables to make the Aſſeſſments; and if any refuſed to pay the Eight-pence a Day, he would have them know they were guilty of little leſs than Treaſon.

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Sir *Henry Griffin* depoſed, That the Lord *Strafford* granted Warrants to the Conſtables, for levying the Arrears of a Month's Pay for his Regiment, and it was paid thereupon: But it being demanded, if it were not paid voluntarily, he anſwered, it might for ought he knew.

And becauſe the Lord *Strafford* had ſaid, That the Gentlemen of the County themſelves agreed, that the Money for the Militia ſhould be raiſed in this Manner; they brought three or four Gentlemen, who depoſed, that they did not agree to it, becauſe the Lord *Strafford* refuſed to preſent their Petition for calling a Parliament.

The Earl anſwered, that he did not approve of the Clauſe in their Petition for calling a Parliament, becauſe he knew the King intended to call one before, with which he had acquainted the Gentlemen before; and he thought it improper the King ſhould be preſſed to it, when it was an Act of his own mere Grace: That the Tax was levied by their own Conſent; and of two or three hundred Gentlemen that were preſent, not above three or four diſſented from it, and thoſe were the Perſons that had been examined before their Lordſhips.

Then Sir *Paul Neal* was called, who depoſed, That it was agreed by the County to advance the Month's Pay, or Eight-pence a Day, with which the Earl was charged with levying by his own Authority; that there were two hundred Gentlemen in the Town-Hall of *York* at that Time, and he believed not above four or five diſſented; but he could ſwear there were not above half a Score negative Voices. Sir *Edward Osborne* depoſed to the ſame Effect, adding, that they all attended the Earl when he delivered the Meſſage to his Majeſty, offering to advance a Month's Pay; and that he thought there might be three hundred in the Hall when the Meſſage was agreed on.

Sir *William Pennyman* and Sir *William Savile* confirmed the Teſtimony of the former, and added, that in that Part of the Country where they lived, it was chearfully paid, and no Complaint made; and Sir *Edward Osborne* ſaid, he knew of no forceible Means uſed: Others confirmed this, and ſaid, if there were any Differences about it, it was where the People thought themſelves aſſeſſed above their Proportion.

Then his Lordſhip obſerved, that as to the Warrant that had been produced for levying this Money, directed to Sir *Edward Osborne*, wherein the Money was ordered to be paid on Peril of their Lives, he declared he never iſſued any ſuch Warrant; and unleſs they produced ſuch an one under his Hand, he hoped their Lordſhips would acquit him of it: That the Money was, in Truth, voluntarily offered and paid, and no Force uſed; and ſince no ſuch Warrant appeared to be iſſued by him, he thought he muſt be adjudged clear of the Matter charged in this Article.

He obſerved farther, That his Commiſſion would bear him out, if he had no other Authority, for what he did; for by that he was empowered to command all Lieutenants and Deputy-Lieutenants, to ſend out ſuch able-bodied Men for the War as he ſhould appoint, ſufficiently armed; and that he did not ſend to them to raiſe Money, but Men; and if they found it for their Eaſe, they might be at the Charge of ſending others, and not ſerve in Perſon themſelves; and his Commiſſion indemnified him for what he ſhould do in the Premiſes; However, if he had erred in the Execution of his Commiſſion, he was juſtified by the Statute of 11 *Hen.* VII. *cap.* 1. which declared, that it was againſt Law and Conſcience, that Perſons executing the King's Commands in Time of War, ſhould loſe or forfeit any Thing; and therefore enacted, that all who ſerved the King in his Wars, ſhould not, for ſo doing their Duty, be proſecuted for Treaſon, or any other Offence, whereby they ſhould forfeit Lands or Goods; but ſhould be utterly diſcharged from all Vexation, *&c.*

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The Managers replied, That if a Majority of the Gentlemen did agree to raiſe a Month's Pay, they could not lay a Tax upon the reſt of the County, or bind thoſe that diſſented: That the raiſing Money by ſuch Warrants was not legal, much leſs the levying Money by Force.

That his Lordſhip's Commiſſion gave him no Power to levy Money, nor was the Statute he mentioned to his Purpoſe; for that only ſaid, when Men were doing their Duty, according to their Allegiance, they ſhould not be attainted of Treaſon: But this did not juſtify the levying of Money on the Subject in an unlawful Way, nor did the Warrants require the Subject to ſerve or pay Money in Lieu of it; but if they refuſed to pay ſuch a Sum of Money, then they were obliged to ſerve.

And though the Lord *Strafford* objected that the Warrants did not concern him, becauſe they were not under his Hand; it appeared they were under the Hand of the Vice-Preſident, who was ſuppoſed to have a Warrant from him.

That this Juſtification of the Priſoner's, in the Face of the Parliament, was ſufficient to condemn him: To ſay, becauſe he was Lieutenant-General of the Army, he might iſſue his Warrants, and tax the Subject, was to aſſume a Parliamentary Power, without which no Tax could be laid.----Here the Earl interrupted the Manager, and ſaid, the commanding Men to perform their Duty in Defence of their King and Country, was very different from a Power of impoſing Taxes, which he never pretended to.

The Managers replied, he had maintained, that by the Authority of his Commiſſion he could juſtify what he had done: That he gave Warrants to levy Money, which was levied by Force; and conſequently he had aſſumed a Power of levying Money by Force: That it did not follow, becauſe a Man was bound to ſerve in Perſon, therefore Money might be required of him; and if he refuſed it, he muſt be forced into the Service, on pain of Death, according to the Tenor of Sir *Edward Osborne*'s Warrant.

The Managers drop ſeveral Articles.

The Managers not thinking fit to ſay any thing to the 28th Article, (and having dropped ſeveral others before,) the 12th of *April* was appointed

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pointed for ſumming up the Evidence on both Sides; when the Peers being aſſembled, and the Earl brought to the Bar, the Lord High Steward directed him to ſum up the Charge and his Defence as clearly and ſuccinctly as he could. Whereupon the Earl addreſſed himſelf, to recapitulate what had been offered on either Side: But *Ruſhworth* has thought fit to give us only an Abſtract of this Speech in his Defence; though he omitted nothing that was ſaid or ſuggeſted on the other Side againſt him.

It is needleſs to mention any thing of this Recapitulation on either Side, which has been ſaid before, becauſe the Reader may turn back, and have Recourſe to the Evidence and Arguments; but if there be any Remarks or Obſervations that have not been made already, it may be proper to touch upon them.

The Earl obſerved that, in the Management of this Cauſe, the Managers had averred, that ſeveral Articles were fully proved, of which no manner of Proof had been made.

The Earl ſums up the Evidence, and Arguments on either Side.

That as they went on, Article by Article, the Managers had admitted that none of them were Treaſon ſingly; but urged that every one conduced to prove the Treaſon they charged him with: But he had watched all along to the laſt, to ſee if he could find that poiſoned Arrow, that ſhould envenom all the reſt; that deadly Cup of Wine that ſhould intoxicate; a few alledged Inconveniencies and Miſdemeanors, to run them up to High-Treaſon; but could diſcover nothing of this kind.

It ſeemed ſtrange to him, that ſince there were ſuch eſſential Differences between Miſdemeanors, Felonies, and Treaſons, any Number of Miſdemeanors ſhould make a Felony, or an hundred Felonies make a Treaſon.

That many Things had been urged againſt him, as conducing to Treaſon; but, unleſs it appeared that ſome Treaſon had been actually committed, this could not effect him.

That the Managers endeavoured to ſhew, there were two Sorts of Treaſon; namely Treaſon by the Statute, and Treaſon by the Common Law; and that the latter were conſtructive and arbitrary Treaſons; but conſtructive Treaſons, he obſerved, had been a great while Strangers to this Commonwealth; and he truſted, by their Lordſhips Wiſdom and Juſtice, would be ſo ſtill.

Then his Lordſhip, having gone through the twenty-eight Articles, and the Evidence on both Sides, with the Obſervations that had been made on them; ſaid, He did not find that either the Statute or Common Law had declared *an Endeavour to ſubvert the fundamental Laws* to be High-Treaſon; or that thoſe Things were Treaſon *accumulatively*, that were not ſo apart; and he thought it very hard, his Life and Honour ſhould be brought in Queſtion on a Law that was not extant, and which no Man could ſhew; concluding, according to *Ruſhworth*, in theſe Words:

" Jeſu! my Lords, where has this Fire lain " all this while, ſo many hundred Years to- " gether, that no Smoke ſhould appear, till it " burſt out now, to conſume me and my " Children: Hard it is! extreme hard, in " my Opinion, that the Puniſhment ſhould " precede the Promulgation of the Law: That " I ſhould be puniſhed by a Law ſubſequent to " the Act done. I moſt humbly beſeech your " Lordſhips, take that into Conſideration; " for certainly it were better a great deal to " live under no Law but the Will of Man, " and conform ourſelves in human Wiſdom " as well as we can, and to comply with that " Will, than to live under the Protection of " a Law, as we think; and then a Law be " made to puniſh us for a Crime precedent " to that Law: I conceive no Man living " can be ſafe, if that is to be admitted: Where " no Token, no Admonition is given, to be- " ware of the Offence, what human Prudence " can prevent a Man's Deſtruction, and that " inſtantly? --- May your Lordſhips have that " Regard for the Peerage of *England*, as ne- " ver to ſuffer yourſelves to be put upon thoſe " moot Points, upon ſuch Conſtructions and " Interpretations as theſe are, when the Law " is not clear or known. ---- If there muſt be " a Trial of Wits, I beſeech your Lordſhips, " the Subject may be of ſomething elſe than " of your Lives and Honours: It will be your " Lordſhips Wiſdom to caſt from you thoſe " bloody and myſterious Volumes of conſtruc- " tive and arbitrary Treaſons, and to betake " yourſelves to the plain Letter of the Statute, " which tells you where the Crime is, that ſo " you may avoid it: And let us not, my " Lords, be ambitious to be more learned, in " thoſe killing Arts, than our Forefathers " were. My Lords, it is now full two hun- " dred and forty Years ſince any Man has " been touched to this Height upon this Crime, " till I was ſingled out: Let us be content " with what our Forefathers left us, and not " awake thoſe ſleepy Lions to our own De- " ſtruction, by raiſing up a Company of Re- " cords, that have lain ſo many Ages by the " Walls, forgotten and neglected.

" My Lords, it troubles me extremely, to " reflect that my Misfortunes may be made a " Precedent to the Diſadvantage of the whole " Kingdom: I beſeech your Lordſhips, there- " fore, to conſider my particular Caſe, that " you do not, through me, wound the Intereſt " of the Commonwealth; for though the " Gentlemen Managers ſay they ſpeak for " the Commonwealth, I believe in this par- " ticular I ſpeak for the Commonwealth too; " and that the Miſeries that will follow upon " this will be ſuch, that in a few Years it " will come to that which is expreſſed in the " Act of *Henry* IV: *That no Man will know " what to do, or what to ſay.*

" Do not, my Lords, put thoſe Difficul- " ties on the Miniſters, but that they may, " with Cheerfulneſs, ſerve the King and the " State; leſt it come to this, That no Man " will meddle with Affairs of State that " hath Wiſdom, and Honour, and Fortune " to loſe.

" I have troubled your Lordſhips longer " than I ſhould have done, were it not for " the Intereſt of thoſe Pledges that a Saint " in Heaven left me. I would be loth, my " Lords. ------- (*Here he wept, and pauſed.*) " What I forfeit for myſelf is nothing; but " I confeſs, that my Indiſcretion ſhould " forfeit for them, it wounds me very deep- ly:

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" ly. Pardon my Infirmity; ſomething I " ſhould have ſaid, but I ſee I ſhall not be " able. And now, my Lords, for my ſelf, " I thank God, I have been taught, that " the Afflictions of this preſent Life are " not to be compared with that eternal " Weight of Glory, that ſhall be revealed " hereafter. And ſo my Lords, with all " Humility and Tranquility of Mind, I ſub- " mit my ſelf clearly and freely to your Judg- " ments; and, whither that righteous Judg- " ment ſhall be to Life or Death,"

TE DEUM LAUDAMUS: TE DOMINUM CONFITEMUR.

The Managers anſwer to the Reply to the Earl.

To this Speech of the Earl's, Mr. *Glynn*, the Manager, replied, that notwithſtanding his Lordſhip had often obſerved, th t many of the Articles were proved but by one Witneſs, and that the Statute of *Ed.* VI. requir- ed two, this was a Fallacy, known to his own Breaſt; for the Treaſon laid to his Charge was, *The ſubverting the Laws*; and though ſome one Fact might be proved only by one Witneſs; yet put the Witneſſes together, and there were an Hundred to the whole, which abundantly ſatisfied the Intention of the Sta- tute. That his Lordſhip had aſperſed the Managers, by ſaying, they had affirmed Things to be proved which were not proved; but they ſhould retort upon him, That he had been that Day guilty in the higheſt Degree, of what he moſt unjuſtly laid to their Charge.

As to his Lordſhip's Objection, that there had been no Treaſon committed: The very *Intention* of killing the King was Treaſon, and it was the Intention of the Death of the Law, that was in Queſtion, it had been too late to queſtion him after the Law had been actually killed. The Law could not have ad- judged him guilty of Treaſon, when the Law itſelf had been ſubverted. That *Guy Faux* had a fairer Excuſe than my Lord *Strafford*, for he only diſcovered Intentions of blowing up the King and State; but his Lordſhip by his Councils and Actions had ex- preſſed a Deſign of deſtroying the whole Kingdom, and the King's Claim by Law, and by Deſcent. (*And, having ſummed up the Evidence for the Commons, he ſaid*) If this Lion, now he is chained and muzzled, and under a Proſecution for High-Treaſon, would dare to vent ſuch Language, and ex- preſs ſo much Malignity, as he had done in his Defence, how would he deſtroy if he was unchained? The Lord *Strafford* was queſti- oned for High-Treaſon, in going about to ſubvert the Laws of both Kingdoms, in De- fence whereof their Lordſhips noble Anceſ- tors had ſpent their Blood; and as they were the Sons of thoſe Fathers, and the ſame noble Blood run in their Veins, he was con- fident they would not think that Man fit to live, who would deſtroy that, which protect- ed their Lives, Liberties, and Eſtates.

That their Lordſhips had the Complaints of three Kingdoms preſented before them a- gainſt this great Man, whereby they might obſerve a mighty Storm was raiſed, that threatned their Ruin and Deſtruction: That the Commons had diſcovered this *Jonas*, who occaſioned the Tempeſt, and as much as in them lay would diſcharge their Conſciences, and throw him out of the Ship to allay the Tempeſt; and they *expected*, and were con- fident their Lordſhips would finiſh the Work, and that with Expedition, leſt by the Con- tinuance of the Storm, the Ship, Tackling and Mariners, both Church and Common- Wealth, ſhould be ruined and deſtroyed.

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Mr. *Pym*, another of the Managers (uſu- ally ſtiled in thoſe Days *King Pym*, from his Influence on that Factious Houſe of Com- mons, and the Mob) ſeconded Mr. *Glynn*, and averred that it was clearly proved, the Earl of *Strafford* had endeavoured, by his Words, Actions, and Councils, to ſubvert the fundamental Laws of *England* and *Ire- land*, and introduce an arbitrary and tyran- nical Government: That this was the en- venomed Arrow for which he enquired; this was the intoxicating Cup that had tainted his Judgment, and poiſoned his Heart; and from thence was infuſed that ſpecifical Difference, which turned his Speeches, Actions, and Councils into Treaſon, not Cumulative, as his Lordſhip expreſſed it, as if many Miſdea- meanors could make one Treaſon, but for- mally and eſſentially; for it was the End that made the ſpecifick Difference: Even indifferent Words and actions might be Treaſon, being done and ſpoken with a treaſonable Intention.

Then he ſhewed the great Benefits both the King and the Subject received from the Laws, and the Miſchiefs that would follow from that Subverſion of them, which the Earl had conſpired, and endeavoured to bring about: That as to the Earl's Objection, that he ought not to be queſtioned for what he had adviſed as a Privy-Counſellor, according to his Con- ſcience; his being a Privy-Counſellor made his Fault the more heinous, as being commit- ted againſt ſo great a Truſt, and endeavouring, under the Character of a Privy-Counſellor, to infect and poiſon his Majeſty with ſuch wick- ed Principles and Deſigns.

As to that other Plea, That whatever he had ſaid was with a good Intention: Where the Matters propounded were Evil in their own Nature, as theſe were, they could never be juſtified by any Intentions: And as to what he had urged of the Neceſſity of the Caſe; if there was a Neceſſity, it was of his own mak- ing: He had brought the King under this Ne- ceſſity, and muſt not make that a Ground of his Juſtification, which aggravated his Offence: That though he alledged they had proved no- thing but Words, and no Effect followed, the miſerable Diſtempers into which he had brought all the three Kingdoms, was a ſuffi- cient Evidence of the miſchievous Effects of his Councils: That to alter the Frame and Conſtitution of Government was Treaſon in any State; and the Laws would be very de- fective, if they had not a Power to ſecure and preſerve themſelves.

That Life, Honour, and Eſtate, it was true, were all forfeited by Treaſon; but this Pri- ſoner had committed ſo many Treaſons, that, though he paid all theſe Forfeitures, he would ſtill remain a Debtor to the State: And no- thing

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thing could be more equal than that he ſhould periſh by the Juſtice of that Law he would have ſubverted. Neither was this a new way of Blood, but this Law might be traced to the very Original of the Kingdom. If, as he alledged, it had not been put in Execution theſe Two hundred and Forty Years, it was becauſe, in all that Time, there had not been found a Man bold enough to commit ſuch Crimes as theſe.

Mr. Lane's Argument for the Earl, as to Matter of Law.

Then Mr. *Lane*, Attorney-General to the Prince, being permitted to argue the Points of Law in Behalf of the Earl of *Strafford*, obſerved, That it was admitted the Earl was not within the *Letter* of the Statute of 25 *Ed.* III. and proceeded to ſhew that he was not within the *Meaning* of it; for that, 1. It was a Declarative Law, and ſuch were not to be taken by Conſequence, Equity, or Conſtruction but by the *Letter* only; and, 2. It was a Penal Law, and if their Grounds (as yet unqueſtioned) held good, ſuch Laws admitted of no Conſtructions or Inferences: That by the Statute of 21 *Edw.* III. it was made Treaſon for a Servant to kill his Maſter; and in the 23d of the ſame Reign, one was proſecuted for Treaſon, in killing his Father, grounded on that Argument, *a majore ad minus*; but it was reſolved that it could not be Treaſon, becauſe the 25th of *Edw.* III. had ſpecified what Facts ſhould be Treaſon, ſince which nothing could be conſtrued Treaſon that was not ſo by the Letter of that Act.

That one or more Acts of Injuſtice could in no Senſe be termed a Subverſion of the Laws; for, if ſo, we might have as many Traytors as Judges, theſe being all Men ſubject to Error, and might one Time or other have given erroneous Judgments.

That in the 28th of *Hen.* VI. *John de la Pole*, Duke of *Suffolk*, was charged by the Houſe of Commons with Articles of High-Treaſon, not unlike theſe; as that he had given bad Advice, that he had debaſed the Coin, ſeſſed Men of War, made ſummary Decrees, impoſed Taxes, corrupted the Fountains of Juſtice, perſuaded the King to an unneceſſary War, and to relinquiſh *Anjou*; but theſe Articles being debated by the Lords, they reſolved they were Felony, but not Treaſon: Another Perſon was charged with ſubverting the Laws in the Reign of *Hen.* VIII. and it was held not to be Treaſon; and this was the Caſe alſo of *Richard Larkes*.

Nor was the Earl charged here with ſubverting the Fundamental Laws, but with an *Intention* to ſubvert them; and an *Intention* was only Treaſon, when the Life of the King, or Queen, or of their Children, was deſigned: In other Treaſons, the Fact muſt be actually committed as well as intended, by the 25th of *Edw.* III. as killing the Chancellor, Counterfeiting the Broad Seal, the Coin, *&c.*

And if ſuch an *Intention* was not Treaſon by the Statute, ſo neither was it by the Common Law; for all Treaſons were aboliſhed which were not ſpecified in the 25 *Edw.* III. and this was not to be found in that Statute.

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As to the Saving in this Statute, that reſerved a Power to the Parliament to declare what ſhould be Treaſon for the Time to come: That Proviſo was repealed by a Statute made in the Reign of *Hen.* IV. and it was further enacted thereby, That nothing ſhould be deemed Treaſon, but what was literally contained in the 25th of *Edw.* III. whereupon the Record ſays, there was great Joy at the making this Act; for the drawn Sword, hanging over every Man's Head by this ſlender Thread of a Conſequence or Illation, was removed by that Act. And by the Statute of the 1ſt of *Mary* alſo it is declared, That none ſhall be puniſhed in Life or Eſtate as a Traytor, but for a Crime contained in the 25th of *Edw.* III. and no mention is there made of the *Salvo*. That the Earl of *Northumberland*'s Caſe, in the Reign of *Hen.* IV. came the neareſt to this; and that was declared to be but Felony, though it would have been conſtrued Treaſon, if it had not been for the Statute of 1 *Hen.* IV. whereby that Proviſo was repealed. And he was confident, ſince that Act not one Man had ever been declared a Traytor, either by the King or Parliament, except it were upon the 25th *Edw.* III. or ſome other Statute literally and declaratively taken.

The Commons neglect to demand Judgment, and bring in a Bill of Attainder.

The Trial being over, and the Faction pretty well aſſured that a Majority of the Lords were of Opinion, that there was no Treaſon in the Articles preferred by the Commons, and that the Earl was in a fair way of being acquitted by his Peers, they did not think fit to rely on their Judgment, but immediately brought a Bill into the Houſe of Commons, to attaint the Earl of High-Treaſon, being reſolved, if there was no Law in being that would deſtroy him, they would make a Law on Purpoſe, and force the Royal Aſſent to it, as well as the Compliance of the Upper Houſe, by their Rebellious Mob.

Lord Digby's Speech on this Occaſion.

Upon bringing in the Bill of Attainder, the Lord *Digby*, who had been one of the Managers of the Commons, being now fully convinced of the Malice and Fury with which this Proſecution was carried on, made a Speech upon the Occaſion, wherein he ſaid, He muſt put the Houſe in Mind of the Difference between Proſecutors and Judges; how unbecoming that Fervour was in them, now they were Judges, which perhaps might be commendable in them as Proſecutors: That it was honeſt and noble to be zealous for the Diſcovery of Truth; but when that was brought to Light, their Judgment thereupon ought to be calm and cautious: That the Grounds on which he delivered his Opinion to the Houſe, that the Earl ought to be proſecuted for High-Treaſon were vaniſhed; and, for that Reaſon, he begged Leave to alter his Opinion.

Before he gave his Conſent to the Accuſation, he was aſſured it would be proved, that the Earl had adviſed the King to employ the Army of *Ireland* to reduce *England*. That Mr. Secretary *Vane*'s Notes, from which this was ſaid to be proved, appeared to be but diſ-jointed Fragments, which no Man could make any thing of:

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And none of the Council, but Sir *H. Vane*, heard any ſuch Words, and he varied in his Teſtimony. That the firſt Time the Secretary was examined, concerning the Army in *Ireland*, he ſaid poſitively, *I cannot charge him with That*; and being examined another Time, he anſwered, *I can ſay nothing to That.* And yet at a third Examination he depoſed, that the Earl of *Strafford* ſaid to the King, *You have an Army in* Ireland, *which you may employ here to reduce this Kingdom.* Theſe Circumſtances induced his Lordſhip to diſcard that Grand Article, concerning his deſperate Advice to the King, of employing the *Iriſh* Army to reduce *England.*

Had this been proved, he could have condemned the Earl with Innocence, as he had proſecuted him with Earneſtneſs; but, as the Caſe ſtood, he could not ſatisfy his Conſcience in doing it.

That this Deſign of Force not appearing, his other wicked Practices could not amount to ſo high a Crime; there were more natural Sources to derive his other Crimes from, than a Deſire of bringing in Tyranny to enſlave them and his own Poſterity, namely, Pride, Revenge, Avarice, Paſſion, and Inſolence of Nature; but, had this of the *Iriſh* Army been proved, it would have diffuſed a Complexion of Treaſon over all.

That his Crimes might perhaps render him worthier to die than many Traitors: And there might be Reaſon to Enact they ſhould be Treaſon for the future: But God forbid he ſhould give Judgment of Death on any Man, and ruin his Poſterity, upon a Law made *a poſteriori.*

The Parliament had a judicial and a legiſlative Power; the Meaſure of the one was what was legally Juſt, of the other, what was prudentially and politically fit for the Good and Preſervation of the whole; but theſe were not to be confounded in Judgment: They muſt not piece up want of Legality with Matter of Convenience. Beſides, he was aſſured neither the King, nor the Lords would paſs the Bill, and that it would cauſe great Diviſions in the State; he adviſed them, therefore, to lay aſide this Bill of Attainder, and think of another, which might ſpare his Life, and yet ſecure the State againſt the Lord *Strafford*, without endangering it as much by a Diviſion concerning his Puniſhment, as the Earl had endangered it by his Practices.

Every Man ought to lay his Hand upon his Heart, and conſider what they were about to do; Whether Juſtice, or Murder. And whether the putting this Lord to Death would not be Murder, with the higheſt Aggravation; Murder under a Colour of Juſtice. ----- The beſt Lawyers were in a diametrical Oppoſition, as to the Nature of the Offence: They would do well, therefore, to diveſt themſelves of all Paſſion and perſonal Animoſity, as well as of all other unjuſtifiable Conſiderations, before they paſſed Judgment. ----- Neither an Apprehenſion that the People would be incenſed, if this Lord's Blood was ſpared, or that it was not fit that one, who was accuſed by the Commons of High-Treaſon, ſhould eſcape with Life, were ſufficient Reaſons for condemning him: Of all ſuch corrupt Motives his Lordſhip did before God diſcharge himſelf, and waſh his Hands of the Earl of *Strafford*'s Blood.

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The Bill of Attainder paſſed by the Commons, and ſent up to the Lords.

The Bill being read a third Time the ſame Day, it was carried by 204 againſt 59; after which it was ſent up to the Lords, by Mr. *Pym*, the great Promoter of it, with Orders to acquaint their Lordſhips, That it was a Bill which highly concerned the Commonwealth, eſpecially the expediting of it: And Mr. *Pym* being returned; reported that he had delivered the Bill of Attainder to the Lords, and acquainted them, that the Commons were ready to juſtify the Legality of the Bill.

The Houſe of Peers having appointed the 23d of *April*, and afterwards the 29th of *April*, to hear the Points of Law argued, in Maintainance of the Bill of Attainder; Mr. Solicitor St. *John* was aſſign'd by the Commons for this Service, and Mr. *Glynn*, and Mr. *Maynard*, ordered to be his Aſſiſtants. In the mean Time, the Commons took Exceptions to the Lord *Digby*'s Speech, which he was obliged to explain with ſome qualifying Expreſſions: And Petitions were preferred to both Houſes, by the Citizens of *London*, ſaid to be ſigned by twenty thouſand Citizens, requiring, that Juſtice might be done upon the Earl of *Strafford*, and other Incendiaries; without which the Petitioners declared, That neither their Lives, Liberties, or Eſtates, could be ſecured: And the Commons ſent another Meſſage to the Lords, to expedite the Bill of Attainder; requiring alſo, that the Lord *Strafford* might be cloſe confined, becauſe they feared he would eſcape: And on the 29th of *April* Mr. St. *John* addreſſed himſelf, to make good the Legality of the Bill of Attainder, before the Lords in *Weſtminſter-Hall*, the Earl then ſtanding at the Bar.

Tumultuous Petitions for Juſtice &c. Execution.

St. John's Argument for the Bill of Attainder.

Mr. St. *John* obſerved, That in ſeveral Countries, there were different Meaſures of Puniſhment inflicted for the ſame Offence; and that in *England*, the ſame Law which enabled inferior Courts to judge according to the Laws already made, empowered the Parliament to make new Laws: However, they did not intend to make a new Treaſon, and condemn the Lord *Strafford* for it; they were moved by other Conſiderations. He held that in former Ages, when Doubts in Law aroſe of great and general Concernment, the Parliament was uſually conſulted; which was the Reaſon that many Acts were declarative of the Old, and not introductive of any New Law. Secondly, They proceeded this way, to obviate thoſe Scruples and Delays, which through a Diſuſe of Proceedings of this Nature might ariſe; and becauſe ſome Doubts had been ſtarted, as if the Declaratory Power of Parliaments was taken away. Thirdly, In reſpect of the Proofs; for if it ſhould happen, that the whole Evidence given was not contained in the Charge, yet ſuch Evidence might be made uſe of by this way of Bill; it not being neceſſary, in this way of Proceeding, that there ſhould be any Articles or Charge at all: And ſo in the Caſe of double Teſtimony, though two Witneſſes might be required, by I. *Edw.* 6. in the Courts of Law; yet on a

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Bill of Attainder in Parliament, private Satisfaction to each Man's Conſcience, was ſufficient; although no Evidence at all was given. That theſe Proceedings by Way of Bill, was not to decline their Lordſhips Juſtice in the Judicial Way, but to husband Time in theſe Exigencies of State, and ſilence all Doubts.

Then he endeavoured to ſhew, that the Earl was guilty of Treaſon, within the 25 *Edw.* III. But theſe Arguments having been urged before, and unanſwerably confuted by the Earl, I omit the Repetition of them; and he ſeems to have been conſcious there was very little in his Arguments on this Head: For he proceeds to tell their Lordſhips, that the Commons had given him Command, to offer further Reaſons, for their reſorting to their legiſlative Power; as firſt, from the Nature of the Earl's Offence, in endeavouring to overthrow the Laws; and ſecondly, from the Frame and Conſtitution of the Parliament, which comprehended the whole Body Politick, and conſequently had Power over every individual Member, for the Preſervation of the whole. And as to what had been ſo often inculcated, That the Law ought to precede the Puniſhment: Why ſhould the Earl expect any Benefit from the Law, that would take it from others? They allowed Law indeed to Hares and Deer, but it was never accounted foul Play to knock Foxes and Wolves on the Head: That the Earl's, was an Offence againſt the Light of Nature, againſt the Dictates of the dulleſt Conſcience: That he well knew he had offended the promulged and ordinary Rules of Law. That Crimes againſt Law had been proved and confeſſed; ſo that the Queſtion was not *de culpa, ſed de pœna*; and though his Lordſhip had aſſerted, that twenty Felonies could not make a Treaſon, they muſt differ from him, if he meant it in the Uſe of the legiſlative Power; for he that deſerved Death for one of thoſe Felonies, deſerved a more painful and ignominious Death for all together, and cited ſome Precedents, where the uſual Puniſhment had been increaſed, on Account of the heinous Circumſtances the Facts were attended with, as in the Caſe of the Biſhop of *Rocheſter*'s Cooks who poiſoned the Broth, which was the Death of a great many People; the Cook was attainted of Treaſon, and it was enacted, that he ſhould be boiled to death.

The Lords refuſe to hear the Earl's Counſel, on the Bill of Attainder.

The next Day, being the 30th of *April*, the Earl petitioned that his Counſel might be heard, as to the Legality and Equity of a Bill of Attainder in this Caſe, where he was taken out of the ordinary Courſe of Juſtice, and a Law propoſed on Purpoſe to deſtroy him: But he was refuſed this Favour.

Thus far RUSHWORTH.

The King's Speech, acquitting the Earl of the Charge.

The King going to the Houſe of Peers the 1ſt of *May*, declared from the Throne, that he could not in Conſcience condemn the Earl of *Strafford* of High Treaſon, and that he would acquaint them with three great Truths. Firſt, That he never had any Intention to bring over the *Iriſh* Army into *England*, nor was ever adviſed by any one to do it. Secondly, That there never was any Debate before him, of the Diſaffection of his *Engliſh* Subjects, neither had he any Suſpicion of them. Thirdly, Neither was he adviſed by any one, to alter the leaſt of the *Engliſh* Laws. He did admit the Earl had been guilty of ſome Miſdemeanors, and ſuch as rendered him unfit to ſerve himſelf, or the Commonwealth, in any Place of Truſt: But he hoped there might be ſome Expedient found out, to ſatisfy Juſtice and their own Fears, without oppreſſing his Conſcience.

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The Commons exclaim againſt the King's Speech, as a Breach of Privilege.

The Commons being acquainted with this Speech, exclaimed againſt it as a Breach of the Privileges of Parliament; and ſaid it was a prejudging of their Councils, an Obſtruction to Juſtice, *&c.* and the next Day, they drew down five or ſix thouſand of the City Mob, armed with Swords and Clubs, to *Weſtminſter*, who having filled the *Palace-Yards*, and every other Avenue to the Parliament-Houſe, ſtopped the Members Coaches, crying out, *Juſtice, Juſtice! Execution, Execution!* Nor would they ſuffer ſome of the Lords to paſs, till they had promiſed to Vote for the Attainder and Execution of the Earl of *Strafford*. The ſame Rabble, with *Cornelius Burgeſs* the *Puritan* Preacher at their Head, broke into *Weſtminſter-Abbey*, plundered the Church of the Furniture and ſacred Veſtments; and then in a hoſtile Manner, marched to the Palace of *Whitehall*, where they inſulted and abuſed his Majeſty, who adviſed them to return Home and mind their Buſineſs.

The Mob drawn down, to compel the Lords to paſs the Bill.

They plunder the Abbey *Church.*

They inſult the King and Royal Family in Whitehall.

Nothing is more evident than that the Commons abetted and encouraged theſe Tumults, not only from their threatning the Lords with them; but from their impriſoning thoſe Juſtices of Peace, who endeavoured to diſperſe the Rabble, and declaring, it was free for all Men to petition the Parliament in this hoſtile Manner: Nor were theſe People only an undiſciplined Multitude; they were formed into regular Bodies, and had Arms given them; and every Profeſſion of Mechanicks, *Taylors*, *Tinkers*, *Shoemakers*, *Weavers*, *Porters*, and *Watermen*, had their particular Captains and Leaders, whom they obeyed implicitely: Theſe poſted up at *Weſtminſter-hall* Gate, and all publick Places about Town, the Names of the Commons, who voted againſt the Earl of *Strafford*'s Attainder, denominating them *STRAFFORDIANS*, and Enemies to their Country; but ſtill the Attainder was in Danger of being rejected by the Houſe of Peers: Whereupon the Faction, to facilitate the paſſing it, pretended they had diſcovered a Plot, between the Court and the Army, for reſcuing the Earl of *Strafford*, and putting a Force upon the Parliament; which was worked up with ſuch Art, that both Houſes appeared in the utmoſt Conſternation, and entered into a ſolemn Proteſtation, to defend themſelves and their Privileges, againſt all Perſons whatever, which they impoſed on their Fellow-Subjects, by the Authority of their own Votes, without the King's Leave; and that having harraſſed and frightened the Lords with their Plots and their Mobs, they compelled them in a manner to paſs the Bill of Attainder on the 8th of *May*; there being twenty

A pretended Plot to facilitate the paſſing the Attainder.

The two Houſes impoſe a Proteſtation on the People.

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twenty-five Lords *Content* and nineteen *Not content*; ſo that the Bill was carried but by a Majority of ſix Voices.

The Bill carried by 6 Voices.

The ſame Day, *(viz.)* *Saturday* the 8th of *May*, both Houſes attended his Majeſty, importuning him to give the Royal Aſſent to the Bill; but could get no other Anſwer from him, than that they ſhould know his Mind the *Monday* following: Whereupon they ſent down the Rabble to *Whitehall*, who cried out, as they were taught, *Juſtice! Juſtice!* threatning the Deſtruction of the King, Queen and Royal Family, unleſs his Majeſty conſented to *Strafford*'s Death: At which, it is ſaid, the Queen was ſo terrified, being conſcious of the Rage of the People againſt her, on Account of her Religion, that ſhe begged the King to yield to their Demands, for the Preſervation of themſelves and their Children: But he was not to be moved by her Intreaties, to give up ſo brave and faithful a Servant. He ſummoned the Privy-Council, the Judges, and five of the Biſhops therefore, and required their Advice, how to extricate himſelf out of the Difficulties that ſurrounded him. The five Biſhops that attended him, were Arch-Biſhop *Uſher*, Dr. *Morton* Biſhop of *Durham*, Dr. *Williams* Biſhop of *Lincoln*, Dr. *Potter* Biſhop of *Carliſle*, and Dr. *Juxton* Biſhop of *London*: But he could receive little Satisfaction from any of them, only Biſhop *Juxton* had the Honeſty and Courage to tell him, he ought to do nothing againſt his Conſcience, for any Conſiderative whatever; while ſome of the reſt of the Biſhops ſcandalouſly inſinuated it is ſaid, that the King had a publick and a private Conſcience, and that he ought to diſtinguiſh between the one and the other. And how Innocent ſoever he might believe the Earl in his private Opinion, he ought to be governed by the Opinion of the two Houſes of Parliament, and the Judges, who had declared the Earl guilty of High-Treaſon.

The Royal Family ſurrounded by the Mob, and threatned to be pulled to Pieces.

The King adviſes with the Biſhops, the Judges, and Privy-Council.

Still his Majeſty ſeemed determined not to give up this Great Man to the Malice of his Enemies; but the Earl, being informed of the Diſtreſs the King was in, and that the Ruin of the Royal Family was threatned, if he did not give the Royal Aſſent to the Bill, generouſly wrote to his Majeſty, not to hazard the Safety of his Family, and the Peace of the Kingdom, for his Sake, but paſs the Bill; adding, that his Conſent would acquit his Majeſty in the Eye of Heaven, and he ſhould reſign his Life with all the Cheerfulneſs imaginable, as an Acknowledgement of the Favours he had received from his Sovereign. And this, it is ſaid, went a great way in determining his Majeſty's Reſolution: After he had ſpent two Days and Nights, therefore, in the utmoſt Perplexity, he ſigned a Commiſſion to the Earl of *Arundel*, and two other Noblemen, to paſs this Bill, with another, no leſs fatal to himſelf and the Kingdom, namely, The Bill to make the Parliament perpetual, unleſs they conſented to their own Diſſolution. This Bill was hurried on, and paſſed both Houſes in a Day or two, under Pretence, that they could borrow no Money for the Service of the State, unleſs the People had an Aſſurance that the Parliament ſhould not be diſſolved; and it was contrived to offer it to the King at this Time, when his Thoughts were entirely taken up with the Earl of *Strafford*'s Caſe, and he could not be ſuppoſed at Leiſure to examine into Conſequences of ſuch a Conceſſion.

The Earl himſelf adviſes the King to paſs the Bill.

The King gives his Aſſent to the Attainder, and to the Bill to perpetuate the Parliament.

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The Commons were over-joyed at the paſſing theſe two Bills, and returned his Majeſty their Thanks for his extraordinary Condeſcenſion, aſſuring him, THEY WOULD MAKE HIM A GLORIOUS KING, AND RICHER THAN ANY OF HIS PREDECESSORS: But, whatever they then deſigned to make him, certain it is, he became from that Hour Dependant on the Parliament, and by giving the Royal Aſſent to thoſe two Acts, reſigned his Authority and Influence over his People. No Man durſt ſerve him, after they ſaw this Great Miniſter ſacrificed to his Enemies; the Parliament perpetuated, and aſſuming a Power of compelling the King to yield to whatever they demanded. The giving up Lord *Strafford* to their Fury, therefore, was ſo far from reſtoring Peace and Tranquility to the Common-wealth, or Safety to the Royal Family, that it inſpired the Faction with ſtill more Inſolence, made them look upon the King and Peers as their Vaſſals, and uſe them for the future as if they really had no other Authority than what they derived from the People, whoſe Repreſentatives the Commons were.

The King begs Lord Strafford's Life.

The King, too late ſenſible of his Error, wrote to the Houſe of Peers, by the Prince his Son, to entreat that Mercy might be ſhewn the Earl: That they would be content with his perpetual Impriſonment; and endeavour to obtain a Conference with the Houſe of Commons, and bring them into the ſame Sentiments, adding, by way of Poſtſcript, *That if he muſt die, it were Charity to reprieve him 'till* Saturday. But ſo little Influence had the Prayers and Entreaties of their once Dread Sovereign, that the Lords let his Majeſty know, neither of his Intentions could be complied with, pretending, that the Queen and their Children would be in Danger, if they ſhould conſent to either.

but is refuſed.

The Execution appointed.

Wedneſday the 12th of *May*, therefore, being appointed for the Execution of the Earl, he deſired the Lieutenant of the *Tower*, the Evening before, to let him ſpeak with the Archbiſhop of *Canterbury*, his Fellow-Priſoner; but the Lieutenant anſwered, he durſt not permit him, without an Order of Parliament: Whereupon the Earl related to Archbiſhop *Uſher*, who was then at his Lordſhip's Lodgings in the *Tower*, what he intended to have ſaid, if he had been permitted to ſee Archbiſhop *Laud*, namely, That he would have deſired his Grace to aſſiſt him with his Prayers that Night, and give him his Bleſſing when he went to the Scaffold the next Day; he deſired alſo he would be at his Window, that he might thank him for all his Favours; and Archbiſhop *Uſher* delivering the Meſſage to Archbiſhop *Laud*

that

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The Earl takes his Leave of the Archbiſhop of Canterbury.

that Evening, his Grace of *Canterbury* appeared at his Window next Morning, as the Earl paſſed by, when the Earl looking up, and demanding his Prayers, and his Bleſſing, his Grace lifted up his hands, and gave him both; then the Earl, making a ſubmiſſive Bow, ſaid, *God protect your Innocency*, and moved on towards the Scaffold, which was erected on *Tower-Hill*. The Lieutenant deſired he would take Coach, for fear the Mob ſhould ruſh on him as he walked, and pull him to Pieces: But the Earl anſwered, No; he was not afraid to look Death in the Face, and the People too.

Have you a Care, ſays the Earl, that I don't eſcape; and whether I die by the Hands of the Executioner, or the Fury of the People, to me is perfectly indifferent.

The Earl's Behaviour on the Scaffold.

Having mounted the Scaffold, he ſaluted the Gentlemen he found there, and began to take his laſt Leave of his Friends, who appeared much more concerned than himſelf, and obſerving his Brother, Sir *George Wentworth*, to weep: Brother (ſaid he cheerfully) What do you ſee in me to deſerve theſe Tears? Does any indecent Fear betray in me any Guilt, or my innocent Aſſurance any Atheiſm? Think now that you are accompanying me the third Time to my Marriage Bed: Never did I throw of my Cloaths with greater Freedom and Content, than in this Preparation, to my Grave. That Stock (pointing to the Block) muſt be my Pillow: Here ſhall I reſt from all my Labours: No envious Thoughts, no Dreams of Treaſon, Jealouſies, or Cares for the King, the State, or myſelf, ſhall interrupt this eaſy Sleep: Therefore, Brother, pity with me thoſe Men, who, contrary to their Intention, have made me happy. Rejoice in my Happineſs, Rejoice in my Innocence. Then kneeling down,

His Proteſtation of his Innocence.

he made this Proteſtation: I hope, Gentlemen, you think that neither the Fear of Loſs, or Love of Reputation, will ſuffer me to belie God and my own Conſcience at this Time. I am now in the very Door going out, and my next Step muſt be from Time to Eternity, either of Peace or Pain. To clear myſelf before you all, I do here ſolemnly call God to Witneſs, I am not Guilty, ſo far as I can underſtand, of the great Crime laid to my Charge; nor have ever had the leaſt Inclination or Intention to damnify or prejudice the King, the State, the Laws, or Religion of this Kingdom; but with my beſt Endeavours to ſerve all, and to ſupport all, *ſo may God be merciful to my Soul.*

His Speech to the People.

Then riſing up he ſaid, My Lord Primate of *Ireland*, and my Lords, and the reſt of theſe noble Gentlemen, It is a great Comfort to me to have your Lordſhips by me this Day, becauſe I have been known to you a long Time. I come here, by the good Will and Pleaſure of God, to pay that laſt Debt I owe to Sin, which is Death; and by the Bleſſing of that God, I truſt to riſe again, through the Merits of Jeſus Chriſt, to Righteouſneſs and Life Eternal.

I ſubmit to the Judgment, that has paſſed on me, with a quiet and contented Mind. I thank God I freely forgive all the World from my very Heart; there is not a diſpleaſing Thought ariſing in me towards any Man living; and my Conſcience bears me Witneſs, that in all my Employments, ſince I had the Honour to ſerve his Majeſty, I never had any Thing in the Purpoſe of my Heart, but what tended to the joint and individual Proſperity of King and People, although it hath been my ill Fortune to be miſunderſtood.

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I am not the firſt that hath ſuffered in this kind; it is the common Portion of us all, while we are in this Life, to err: Righteous Judgment we muſt wait for in another Place; for here we are very ſubject to be misjudged one of another. There is one Thing I deſire to free myſelf of, and I am very confident I ſhall obtain your Chriſtian Charity in the Belief of it. I was ſo far from being againſt Parliaments, that I always thought the Parliaments of *England*, were the moſt happy Conſtitutions that any Kingdom or Nation ever lived under, and the beſt Means under God, to make both King and People happy.

My Lord Primate, it is a great Comfort to me, that his Majeſty conceives me not meriting ſo ſevere and heavy a Puniſhment. I do infinitely rejoice in this Mercy of his, and I beſeech God to return it into his own Boſom, that he may find Mercy when he ſtands moſt in Need of it.

I wiſh this Kingdom all the Proſperity and Happineſs in the World: I did it living, and now dying it is my Wiſh. I do moſt humbly recommend this to every Man who hears me; but deſire they would lay their Hands upon their Hearts, and ſeriouſly conſider, Whether the Beginning of the Happineſs and Reformation of a Kingdom ſhould be written in Letters of Blood; and may I never be ſo unhappy as that the leaſt Drop of my Blood ſhould riſe up in Judgment againſt any one of you; but I fear you are in a wrong way.

My Lords, I have but one Word more: I profeſs I die a true and obedient Son to the *Church of England*, wherein I was born, and in which I was bred; *Peace and Proſperity be ever to it.* It has been objected, but it is an Objection ſcare worth anſwering, that I have been inclined to *Popery*, though I can truly ſay, that from the Time I was One and Twenty Years of Age, to this preſent, going now upon Forty-Nine, I never had it in my Heart to doubt of the Religion of the *Church of England*, nor ever had any Man the Boldneſs to ſuggeſt any ſuch Thing to me. And now, being reconciled by the Merits of Jeſus Chriſt my Saviour, into whoſe Boſom I hope I ſhall ſhortly be gathered, to thoſe eternal Happineſſes, which ſhall never have an End, I deſire heartily the Forgiveneſs of every Man for any raſh or unadviſed Words, or any Thing done amiſs. And ſo, my Lords and Gentlemen, farewell! farewell all things of this World!

I deſire you will now join with me in Prayer, and I truſt in God we ſhall all meet, and live eternally in Heaven, there to receive the accompliſhment of all Happineſs, where

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every Tear ſhall be wiped away from our Eyes, and every ſad Thought from our Hearts: And now God bleſs this Kingdom, and Jeſus have Mercy on my Soul!

Then he ſaluted the Noblemen, and other Perſons of Diſtinction upon the Scaffold; after which he ſaid again, Gentlemen, I entreat you all to pray with me, and for me; and his Chaplain, having laid the Book of *Common-Prayer* before him, he kneel'd down, and prayed out of it a Quarter of an Hour, and as long without Book, concluding with the *Lord's-Prayer*.

Then ſtanding up, he ſaid (to Sir *George Wentworth*) *Brother, we muſt part.* ---- Remember me to my Siſter, and to my Wife, and carry my Bleſſing to my Son: Charge him that he fear God, and continue an obedient Son to the *Church of England*; warn him that he bear no private Grudge, or Revenge towards any Man concerning me. And bid him beware he meddle not with *Church* Livings; for that will prove a Moth and Canker to him in his Eſtate: And wiſh him to be a Servant to his Country, without aiming at high Preferment.

Carry my Bleſſing alſo to my Daughters *Anne* and *Arabella:* Charge them to ſerve and fear God, and he will bleſs them; not forgetting my little Infant, which yet knows neither Good nor Evil.

The Earl beheaded.

While he was undreſſing, he ſaid, I as chearfully put off my Cloaths at this Time, as ever I did when I went to Bed; and putting on a white Cap, he tuck'd up his Hair under it: Then having prayed again, and ſubmitted to the Block, his Head was ſevered from his Body at one Blow.

Inſtructions the Earl left his Son.

By the written Inſtructions the Earl left his Son, he commanded him to be obedient to the Governors he had appointed him; and charged him, as he would anſwer it at the laſt Day, not to enter upon any publick Employment, 'till he ſhould be Thirty Years of Age; and then, if his Prince ſhould call him to publick Service, he ſhould readily undertake it, and be ſincere and faithful to his Maſter, though he ſhould come to the ſame End he did himſelf. And laſtly, that he ſhould never lay his Hands upon any Thing that belonged to the Church. He foreſaw that her Revenues would be ſeized, and conjectured they would be diſtributed among the Nobility and Gentry; and again, charged his Son, therefore, not to meddle with them, for the Curſe of God would follow thoſe, he held, that meddled with ſuch Things.

His Family and Character.

Thomas Earl of *Strafford*, was the Son and Heir of Sir *William Wentworth*, of *Wentworth-Woodhouſe*, in the County of *York*, Bart. He was a popular and weighty Speaker in Parliament, and oppoſed ſome of thoſe extraordinary Methods that were taken for raiſing Money in the Beginning of this Reign; but afterwards coming over to the Court, he was called to the Council-Board, and by Letters Patent, dated the 22d of *July*, in the fourth Year of this King, he was created Baron *Wentworth*, of *Wentworth-Wood-Houſe*; and the 10th of *December* following, he was made Viſcount *Wentworth*, and conſtituted Lord Lieutenant of *Ireland*. On the 12th of *January*, the Title of Baron *Raby* was conferred on him, being deſcended from the Family of *Nevil*, heretofore Lords of *Raby-Caſtle* (which was however at this Time the Inheritance of Sir *Henry Vane*, who expected the Title) and laſtly, he was created Earl of *Strafford*, and elected one of the Knights Companions of the moſt Noble Order of the Garter.

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This Nobleman, according to a late excellent Writer, was a Perſon of extraordinary natural Parts, improved by Education and Buſineſs. He had a lively and penetrating Genius, and his Manner of delivering himſelf was clear and moving. He was, without Queſtion, an accompliſhed Stateſman; and as he was happy in the deſigning Part, ſo he wanted no Courage to go through and execute: And as for Loyalty and Affection to the King, no Man poſſeſſed that Quality in a higher Degree; neither was he only thus well furniſhed for the publick Service, but his private Life was likewiſe regular and unblemiſh'd. He was undone by his Zeal for his Maſter, and the Weight of his Merit ſunk him. Had his Advice been taken, the *Scotiſh* Invaſion muſt in all likelihood have miſcarried. This made the *Covenanters*, implacable, and never give over, till they had purſued him to the Scaffold. Had he been falſe or indifferent to the Crown, theſe few Irregularities of his Government would probably have been overlooked, and he might have lived to the End of his Conſtitution: But he was too great a Terror to Rebellion to be endured at that Juncture.

The Attainder of the Earl of Strafford reverſed.

The Senſe of both Houſes of Parliament (in relation to this Proſecution) after the Reſtoration, when they were no longer under the Influence of a Rebellious Faction, is ſufficiently manifeſted from the Act that paſſed in the 14th Year of *Charles* II. *For Reverſing the Attainder of the Earl of* Strafford. This Act recites, That whereas *Thomas* Earl of *Strafford* was impeached of High-Treaſon, upon Pretence of endeavouring to ſubvert the Fundamental Laws, and called to a publick and ſolemn Arraignment, and Trial, before the Peers in Parliament, where he made a particular Defence to every Article objected againſt him; inſomuch, that the turbulent Party, then ſeeing no Hopes to effect their unjuſt Deſigns by any ordinary way of Proceeding, did at laſt reſolve to attempt the Deſtruction and Attainder of the ſaid Earl, by an Act of Parliament, purpoſely made to condemn him for Accumulative Treaſon, none of the pretended Crimes being Treaſon apart, and ſo could not be in the whole, if they had been proved, as they were not; and alſo judged him guilty of Conſtructive Treaſon, that is of levying War againſt the King, though it was only the commanding an Order of the Council-Board in *Ireland* to be executed by a Serjeant at Arms and three or four Soldiers, which was the conſtant Practice of the Deputies there for a long Time: To which End, having firſt preſented a Bill to the Houſe of Commons, and finding there more Oppoſition than they expected, they cauſed a Multitude of tumultuous Perſons to come down to *Weſtminſter*, armed with Swords and Staves,

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Staves, and to fill both the *Palace-Yards*, and all the Approaches to both Houſes of Parliament, with Fury and Clamour, and to require *Juſtice, ſpeedy Juſtice*, againſt the Earl of *Strafford*: And having, by theſe and other undue Practices, obtained that Bill to paſs the Houſe of Commons, they cauſed the Names of thoſe reſolute Gentlemen, who, in a Caſe of innocent Blood, had freely diſcharged their Conſciences, being Nine and Fifty, to be poſted upon ſeveral Places about the Cities of *London* and *Weſtminſter*, and ſtiled them *STRAFFORDIANS*, and Enemies to their Country, hoping thereby to deliver them up to the Fury of the People, whom they had endeavoured to incenſe againſt them; and then procured the ſaid Bill to be ſent up to the Houſe of Peers, where it having ſome Time reſted, under great Deliberation; at laſt, at a Time when great Part of the Peers were abſent, by Reaſon of the Tumults, and many of thoſe who were preſent proteſted againſt it, the ſaid Bill paſſed in the Houſe of Peers, and at length his late Majeſty, King *Charles* I. granted a Commiſſion for giving his Royal Aſſent thereto, which nevertheleſs was done by his ſaid Majeſty, with exceeding great Sorrow then, and ever remembred by him with inexpreſſible Grief of Heart, and out of his Majeſty's great Piety he did publickly expreſs it, when his own Sacred Life was taken away by the moſt deteſtable Traytors that ever were:

For all which Cauſes, it was enacted, That the Act for the Attainder of the ſaid *Thomas* Earl of *Strafford* ſhould be reverſed, and all Records and Proceedings relating thereto, be cancelled and taken off the File, or otherwiſe defaced, to the End the ſame might never be brought into Example, to the Prejudice of any Perſon whatſoever.

Remarks on the Trial of the Earl of Strafford.

This Act of Parliament is ſo juſt a Comment on the Proſecution of the Earl, and his Remarks ſo full and comprehenſive at the Hearing, that there remains ſcarce any Obſervations to be made on this Trial: I ſhall only juſt touch upon ſome Particulars therefore, and leave the reſt to the Reader's own Reflections, now he has ſeen the Caſe ſo thoroughly examined.

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1. As the Earl was the only Perſon that ever was taken out of the Hands of a Court of Juſtice, after a Trial wherein he had made a full Defence to every Part of the Charge, and murdered by a Statute made on Purpoſe; ſo never any Tranſaction reflected more Diſhonour on the Peerage, than their being made Tools in this Manner, to the Malice and Revenge of a Faction, who had refuſed to ſubmit to their Judgment in a legal Way.

2. That all the Miſeries the King hoped to avoid, by ſubmitting to give the Royal Aſſent to this Act of Injuſtice, were probably brought upon himſelf, the Nation, and his Poſterity, by this very Compliance.

3. We may obſerve, that thoſe brave Men that had the Courage to reſiſt the Torrent of the Times, and were marked out, under the Name of *STRAFFORDIANS*, to be ſacrificed to popular Fury, notwithſtanding all the Practices and Artifice of the Faction, eſcaped their Rage, and have rendered their Memories Immortal, by the noble Oppoſition they made to that Act of Injuſtice.

4. That ſome of his beſt Actions, and ſuch as conduced moſt to the Welfare and Proſperity both of *England* and *Ireland*, were made part of the Charge of High-Treaſon againſt him; among which we may reckon his eſtabliſhing the Linen-Manufacture in *Ireland*, from which both Nations reap ſuch Advantages at this Day, and for which he ought to have his Statue erected in the Capital of each Kingdom; but, as it has been juſtly obſerved already, his Merit was his greateſt Crime.

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The Trial of Colonel NATHANIEL FIENNES, for *Cowardice*, before a Council of War at St. *Albans*. 14 *Dec.* 1643. 19 *Car.* I.

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Fienne's Trial.

THE Articles were exhibited, firſt to the Houſe of Commons, and then to the Council of War at St. *Albans*, where the Commons ordered the Trial to be, by *Clement Walker* and *William Prynn*, Eſqs; Members of the Lower Houſe, in the Behalf of the Common-wealth of *England*.

The Articles.

1. The firſt Article ſet forth, That the ſaid Colonel *Nathaniel Fiennes* did ſuddenly apprehend, impriſon, and remove Colonel *Thomas Eſſex*, late Governor of the City and Caſtle of *Briſtol*, upon Pretence that he intended to deliver up the ſame into the Hands of the common Enemies of the Kingdom and Parliament; and that thereupon the ſaid Colonel *Fiennes*, obtained the Government of the ſaid City and Caſtle for himſelf, and undertook to defend the ſame againſt the ſaid Enemy, for the Uſe of the King and Parliament.

2. That ſoon after he became Governor of *Briſtol*, he did, by Martial Law, condemn and execute ſome of the principal Citizens, namely, *Yeomans Bouchier* and others, only for *intending* to deliver up the ſame to Prince *Rupert*.

3. That he put the Parliament and Kingdom to great Expence in fortifying, garriſoning and furniſhing the ſaid City and Caſtle with Ammunition and Proviſions for three Months, and undertook to defend them for that Space, in caſe they ſhould be Beſieged.

4. That notwithſtanding the Premiſſes, when the Enemy came before the ſaid City and Caſtle with a ſmall Force, and had not beſieged it three Days, he did, before they had taken any of the Works, erected a Battery, or aſſaulted the Walls, moſt diſhonourably, cowardly, and traiterouſly deliver up the ſaid City and Caſtle, with the Cannon, Ammunition, ſmall Arms, Proviſions, Colours, and all his Priſoners, againſt the Conſent of the Parliament and the General, into the Hands of Prince *Rupert*, and other Enemies

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Enemies of the Kingdom and Parliament, to the Loſs of moſt of the Weſtern Parts of *England*,

5. That he beat a Parley without the Privity or Conſent of any general Council of War; or when divers of his Officers and Soldiers adviſed and perſuaded the contrary, and could have defended the ſaid City and Caſtle.

The other five Articles were not very material, only the 7th charges him with an Intention to deliver up the Place to the Enemy before they beſieged it; and the 9th charges him with preſuming to juſtify this cowardly Surrender before the Houſe of Commons in Perſon, and before the whole Kingdom in printed Relations, wherein he endeavoured to diſgrace both the honourable Houſes of Parliament, and the Earl of *Eſſex*, their Lieutenant-General, by publiſhing that, if he had held out the ſaid City and Caſtle to the laſt Extremity, he could not have expected any Relief from them in Eight Weeks.

The Anſwer of Col. Fiennes.

To the firſt Article *Fiennes* anſwered, That Colonel *Thomas Eſſex* was never Governor of *Briſtol*, but only commanded a Regiment there, and that he apprehended him, and ſent him to the General, by his Order; nor did he ever ſeek the Government of *Briſtol*, but endeavoured to be freed from that Employment; and denies he ever undertook to Defend the City and Caſtle: On the contrary he declared, that they were not tenable, in the Condition they were in; and that they muſt fall into the Hands of the Enemy, unleſs better Proviſion were made for their Defence.

2. To the ſecond he ſays, That ſoon after his ſending away Colonel *Eſſex*, he diſcovered and defeated a Conſpiracy, between the Inhabitants of *Briſtol*, and ſome of the Officers of *Eſſex*'s Regiment, to deliver up the City to Prince *Rupert*; and that by apprehending ſeveral of the Conſpirators, he diſappointed the Deſigns of the Enemy: That he afterwards called a Council of War, by a Commiſſion from the General, where divers of the Conſpirators were condemned, and afterwards executed; but the Execution was ſtayed till the General was acquainted with the Proceedings.

3. To the Third he anſwered, That by his own Induſtry, and unwearied Application, he had endeavoured to furniſh the Town, and put it in a Poſture of Defence, without troubling the Parliament, and had well nigh finiſhed a Line, or Rampart of Earth, about the Town; but denied, that he could raiſe a ſufficient Garriſon to defend the City againſt all the Power of the Enemy for three Months, or that he undertook to keep it ſo long, in Caſe it ſhould be beſieged.

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4. To the Fourth, He denies that he delivered up *Briſtol* againſt the Conſent of the Parliament, or the General; or delivered it up traiterouſly, or cowardly, or contrary to his Truſt; but ſays, he did defend the ſame to the utmoſt of his Power, and that he ſurrendered it upon honourable Terms, in reſpect to the State he was in: For that the Enemy had entered the Line, or Rampart, which was not finiſhed; and, the City having no Wall, on that Side, it was impoſſible to prevent their poſſeſſing themſelves of the Place.

5. To the Fifth, That he did not parley with the Enemy, when he was diſſuaded from it by his Officers; but, on the contrary, he was adviſed to the Treaty by far the major Part, if not by the unanimous Conſent of the whole Council of War, and the Gentlemen preſent.

He denied that he had any Intention to deliver up the Town before it was beſieged, as he is charged in the 7th Article; or that he ſaid any thing untruly in his Juſtification of the Surrender of *Briſtol*, as he is charged in the 9th Article: But ſays, that it was with great Difficulty and Hazard he held out four Days, conſidering the Condition the Place was in.

Mr. *Prynne*, the Proſecutor, who was fond of hearing himſelf talk, and would hold forth everlaſtingly upon any Subject almoſt, has filled fifty or threeſcore Folio Pages, with his Speeches and wiſe Harrangues at this Trial; but I believe my Readers, who know the Character of the Man, will gladly excuſe the Repetition of them, and think it ſufficient, in ſuch a Caſe as this, to take Notice, That the Council of War being of Opinion, that Colonel *Fiennes*, had ſurrendered *Briſtol* ſooner, and upon more diſhonourable Terms, than a brave Man ought to have done, paſſed the following Sentence, which their Clerk read to him out of a Paper, *in hæc verba*.

Sentence of Fiennes.

Colonel Nathaniel Fiennes, *you have been arraigned and convicted before this Honourable Council, for ſurrendering and delivering up the Town and Caſtle of* Briſtol, *with the Forts, Magazines, Arms, Ammunition, Victuals, and other Things thereunto belonging; and for not having held the ſame to the utmoſt Extremity, according as by your Duty you ought to have done; for which Offence this honourable Council hath adjudged you to be executed, according to the Articles of War, by having your Head cut off. God have Mercy on your Soul.*

The

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Archbiſhop Laud's Trial

The Trial of the Moſt Reverend Father in God WILLIAM LAUD, Lord Archbiſhop of *Canterbury*, before a Remnant of the Houſe of Lords; which began *March* 12, 1643. 19 *Car.* I.

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Impeached of High-Treaſon, &c.

THE Commons impeached his Grace of High-Treaſon, and other High Crimes and Miſdemeanors, at the Bar of the Houſe of Lords, the 18th of *December*, 1640, deſiring he might be committed to ſafe Cuſtody; whereupon he was delivered to the *Black-Rod*, till the Commons ſhould proceed in their Impeachment; and on *Friday* the 26th of *February* following, fourteen general Articles were ſent up to the Lords againſt him.

Committed to the Black-Rod.

The Articles againſt him.

1. The firſt charged, That he had traiterouſly endeavoured to ſubvert the Laws, and introduce Arbitrary Government.

2. He had denied the Authority of Parliaments, eſtabliſhing an abſolute Power, not only in the King, but in himſelf and other Biſhops, above and againſt Law.

3. That by Threats and Promiſes to the Judges, he had perverted the Courſe of Juſtice, and deprived the King's Subjects of their Rights.

4. That in his own Courts he had ſold Juſtice, and taken Bribes.

5. That he had cauſed divers Canons to be made, contrary to the King's Prerogative, and the Laws; eſtabliſhed an unlawful Authority in himſelf, and Succeſſors; and endeavoured to confirm his exorbitant Power by a wicked Oath.

6. That he had aſſumed a papal and tyrannical Power.

7. That he endeavoured to ſubvert the true Religion, and introduce *Popiſh* Superſtition.

8. That he abuſed the Truſt his Majeſty repoſed in him, procuring the Nomination of Perſons to Eccleſiaſtical Preferments, which belonged to others, and preferring Perſons that were popiſhly affected.

9. That his own Chaplains, to whom he committed the licenſing of Books, were Popiſhly affected, which had occaſioned the publiſhing of divers ſuperſtitious Books.

10. That he endeavoured the reconciling the Churches of *England* and *Rome*, and countenanced the eſtabliſhing a Popiſh Hierarchy in the Kingdom.

11. That he had cauſed ſeveral Orthodox Miniſters to be ſilenced, and deprived, and many Loyal Subjects to forſake the Kingdom.

12. That he had abrogated the Privileges granted the *French* and *Dutch* Churches in this Kingdom, endeavouring to cauſe Diſcord between the Church of *England*, and other Reformed Churches.

13. That he had laboured to bring divers Popiſh Innovations into the Kingdom of *Scotland*, in order to create a War between the Kingdoms of *England* and *Scotland*, and adviſed his Majeſty to ſubdue the *Scots*, forcing the *Engliſh* Clergy to contribute to that War: That he had cenſured the Pacification as diſhonourable; and ſo incenſed his Majeſty, that he entered into an Offenſive War with the *Scots*.

14. That, to prevent his being queſtioned for theſe traiterous Proceedings, he endeavoured to ſubvert the Rights of Parliament, and to cauſe Diviſions between his Majeſty and his People; for which they impeached him of High-Treaſon.

Committed to the Tower.

Two or three Days after the ſending up theſe Articles, his Grace was committed to the *Tower*, where he remained from the 29th *Feb.* 1640-1, to the 24th of *Oct.* 1643, when he received Ten additional Articles, together with an Order from the Lords, to put in his Anſwer in Writing before the 30th of the ſame Month.

Ten additional Articles ſent him above two Years after his Impriſonment.

1. The firſt additional Article charges, that in the 3d and 4th Year of the King, he cauſed the Parliament to be diſſolved, and aſperſed the Members, affirming they were factious *Puritans*, and commended the *Papiſts*.

2. That for ten Years paſt he had endeavoured to advance the Power of the Council-Table, the Canons of the Church, and the King's Prerogative, above the Laws.

3. That to advance the Eccleſiaſtical Power, he had hindred the granting Writs of Prohibition to the Eccleſiaſtical Courts.

4. That a Judgment being given againſt one *Burley*, a Parſon for Non-reſidency, he had ſtayed Execution by applying to the Judges, and ſaid, *He would never ſuffer a Judgment to paſs againſt a Clergyman, by* nihil dicit.

5. That he had cauſed Sir *John Corbet*, a Juſtice of Peace, to be impriſoned, for cauſing the Petition of Right to be read at the Seſſions of the Peace; and, during his Impriſonment, granted away part of the Glebe Lands of *Alderly*, belonging to the ſaid Sir *John*; had prevented the Execution of a Judgment, which Sir *John* had obtained, and procured him to be committed by the Council-Table, till he ſubmitted to their Order.

6. That divers Sums being given for purchaſing Impropriations, he had cauſed the ſame to be overthrown in the Court of *Exchequer*.

7. That he had harboured and relieved *Popiſh* Prieſts, who had traduced the 39 Articles.

8. That he had ſaid, a Blow muſt be given to the Church, before it could be brought to Conformity.

9. That in *May*, 1640, he cauſed the Convocation to be held, after the Diſſolution of the Parliament, where Canons were made, contrary to Law and the Privilege of Parliament, and a dangerous and illegal Oath formed, approving the Doctrine and Diſcipline of the Eſtabliſhed Church, and promiſing not to conſent to any Alteration in the Government of the Church by Archbiſhops, Biſhops, Deans, Archdeacons, *&c.* Which Oath he had taken himſelf, and cauſed other Miniſters to take; and impriſon the Biſhop of *Glouceſter*, for

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refuſing to ſubſcribe the ſaid Canons, an take the Oath, till he ſubmitted.

10. That a Reſolution being taken at the Council-Table for aſſiſting the King by extraordinary Means, if the Parliament ſhould prove peeviſh, the Archbiſhop wickedly adviſed his Majeſty to diſſolve the Parliament in 1640, and it was thereupon diſſolved; and ſoon after he told his Majeſty, *That he was now diſſolved from all Rules of Government, and at Liberty to uſe extraordinary Ways for a Supply.*

He petitions for Money out of his Eſtate,

Upon receipt of theſe Articles, and the aboveſaid Order from the Lords, his Grace petitioned he might be allowed ſomething out of his Eſtate, which they had ſeiz'd and ſequeſtred, to bear the Charges of his Trial:

for his Papers, Counſel, &c.

That his Papers might be reſtored him, that he might be enabled to prepare for his Defence; and that he might have Counſel, a Solicitor, and ſome Servants to attend his Buſineſs: And upon a ſecond Petition, Mr. *Dell*, his Grace's Secretary, was aſſigned him for a Solicitor; Mr. *Hearne*, Mr. *Chute*, Mr. *Hales*, and Mr. *Gerard*, were aſſigned him for Counſel; but they would not allow him a Penny out of his Eſtate, *Glynn* telling them he might proceed in *forma pauperis:* However, they made him pay even for the Copies of his own Papers.

and that they would diſtinguiſh between the Treaſons and Miſdemeanors he was charged with.

His Grace petitioned the Lords alſo, That they would diſtinguiſh the Treaſon from the Miſdemeanors in the Articles; for the Crimes were ſo interwoven and connected in the Concluſion, that they might all refer to Treaſon, and conſequently his Counſel would not be permitted to give him any Advice in Matters of Fact; but neither the Lords nor Commons would make any Diſtinction, though Application was made to them reſpectively: However, the Lords were ſo gracious to give him further Time to put in his Anſwer, till the 13th of *November*, when his Grace appeared at their Lordſhips Bar, and put in his Anſwer in Writing to

His Anſwer put in.

the laſt Article, *viz. That he was not guilty in ſuch Manner and Form as the ſaid Articles of Impeachment charged.*

But his Grace appearing at the Lord's Bar again, the 16th of *January*, 1643-4, It was obſerved, there was no Anſwer put in to the firſt Articles, or any Iſſue joined; and thereupon his Grace was ordered to put in his Anſwer to the Original Articles the 22d of *January*.

Then his Grace petitioned that his Anſwer to the laſt Articles might be taken off the File, and that they would diſtinguiſh between Treaſon and Miſdemeanors, that he might give a particular Anſwer to both; and that they would give his Counſel leave to ſpeak to the Generality and Uncertainty of the Articles, which they declared no Man living could prepare an Anſwer to, as the Caſe ſtood; but his Grace was not indulged in any of theſe Particulars, and therefore found himſelf under a Neceſſity of putting in the ſame general Anſwer he had done before (*viz.*) *That he was not guilty:* Only as to the 13th Original Article, and the reſt of them, that related to *Scotland*, he pleaded the late Act of *Indemnity*.

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He is brought to his Trial.

His Grace, having received an Order to prepare for his Trial the 12th of *March*, 1643-4, was brought to the Bar of the Houſe of Lords that Day; where he found a Committee of the Commons, conſiſting of Serjeant *Wilde*, Mr. *Brown*, Mr. *Maynard*, Mr. *Nicholas*, and Mr. *Hill*, appointed to manage the Evidence againſt him; and *Prynne* acted as their Solicitor, having *Grice* and *Beck* to aſſiſt him. His Grace alſo obſerves, that *Prynne*, during the Trial, kept an Office, where he inſtructed and tampered with the Witneſſes.

Firſt Day's Hearing. Wilde upon the Impeachment.

Mr Serjeant *Wilde* opened the Charge, by a moſt ſcandalous and virulent Invective againſt this great Prelate: wherein he ſays, If the Memory of all the pernicious Practices, which had been from Time to Time attempted againſt our Religion and Laws were loſt, here, they would find them revived: That had the Faults of this Man been no other than thoſe of common Frailty and Inadvertency, they would gladly have thrown a Veil over them; but, being wilful, deſtructive, and comprehenſive of all Evils, the Sin would lie on their own Heads, if they did not call for Juſtice. That here was Treaſon in the higheſt Pitch and Altitude; even the betraying the whole Realm, and the Subverſion of the very Foundations. That theſe Crimes of themſelves ſo heinous, were aggravated by the Quality of the Offender, who had been advanced to the moſt eminent Stations in Church and State, and was endowed with many great Gifts of Nature: But all theſe Advantages he had perverted to the Deſtruction of the Publick.

A General Calumny on the Clergy.

That Churchmen in all Ages, were the archeſt Seedsmen of Miſchief, and the principal Actors in all the great Diſtractions that had happened; and as they meddled with Temporal Things, heterogeneal to their Calling, God was pleaſed to ſmite them with Blindneſs, and infatuate their Councils, of which this Prelate was an Inſtance; who, employing his Time in State Affairs, became *the Author of all the illegal and tyrannical Proceedings and Innovations in Religion and Government, and indeed, of all the Concuſſions and Deſtractions, that had happened in Church and State.*

And when by the Magnanimity of former Princes, and the Wiſdom of their Anceſtors, they had ſhaken off the Antichriſtian Yoke; and when they had ſeen ſuch bloody Maſſacres, Plots, and Proſecutions at Home and Abroad, in order to introduce it again: That this Man ſhould go about to reduce them to thoſe rotten Principles of Error and Darkneſs again: It could not be expected but the People ſhould be ready to ſtone him. He concluded, That though *Naaman* was a great Man, yet he was a Leper: And this Man's Leproſy had ſo infected all, that there remained no Cure, but the Sword of Juſtice; which they doubted not but their Lordſhips would apply, that the Commonwealth might live again and flouriſh.

The Archbiſhop permitted to reply to the Manager.

His Grace having obtained Leave to ſpeak in his Defence, ſaid, ----- That it was a great Affliction

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Affliction to him to appear at this Bar as a Criminal, though he ſhould be acquitted; but he was not very ſolicitous about his Sentence, for he thanked God he had ſpent his Time ſo, that he was neither aſhamed to live, nor afraid to die; nor could the World be more weary of him, than he was of it: But if none of theſe Things whereof theſe Men accuſed him, merited Death by Law, though he might not in this Caſe appeal to *Cæſar*, yet he might, and did, to their Lordſhip's Juſtice; not doubting but God would protect his Innocence.

The Charge againſt him, he obſerved, was divided into two principal Heads, (*viz.*) His endeavouring to ſubvert the Laws, and, The Religion by thoſe Laws eſtabliſhed.

As to the Laws, he ſaid he had been a ſtrict Obſerver of them all his Life; and ſince he had any Share in the Adminiſtration, no Man had been more guided by them than himſelf, as the learned Counſel preſent, who had attended the Council-Table, could teſtify: Nay, he had ever held, that human Laws bind the Conſcience; and this Doctrine he conſtantly preached. That he looked upon an Endeavour to ſubvert the Law a greater Crime than to break any particular Law: And this they might obſerve was his Judgment, by the Book he wrote againſt *Fiſher*; out of which he read a Paſſage to this Purpoſe:

" As to Religion, he was born and bred " up in the Church of *England*, and by the " Bleſſing of God, and the Favour of his " Prince, grown up to the Years that were " then upon him, and to that Place of Pre- " ferment which he did yet bear; and in " this Church, by the Grace of God, he was " reſolved to die: That he had ever continu- " ed ſteady to his Profeſſion and Principles, " without any Regard to worldly Views; " though if his Conſcience would have given " him Leave to ſhift his Tenets as Time and " and Occaſion ſerved, he might have eaſily " ſlid through all the Difficulties of this Sort " that had preſſed him: That he had always " endeavoured, that the publick Worſhip of " God, which was too much ſlighted, might " be preſerved, and that with as much De- " cency and Uniformity as might be: For " he was ſtill of Opinion, that Unity could " not long continue in the Church, without " Uniformity. He ſaw that the Neglect of " the publick Worſhip, and the Places dedi- " cated to that Service, had caſt a Damp upon " the true, and inward Worſhip of God; " which, while we live in the Body, needs " external Helps, and all little enough to keep " it in any Vigour: But, though he had en- " deavoured to redreſs Things according to " the Law and Canons, he did not know he " had ever done it, but with the Conſent of " the People.

" That he was innocent, as well in Thought " as Practice, of any Deſign to alter Religion " and introduce Popery; and, if nothing but " Truth were ſpoken, he challenged what- " ever was between Heaven and Hell to ſay " their worſt againſt him, in Point of Reli- " gion, in which he ever hated Diſſimu- " lation; and though he might have procured " his Safety by it, he thought it no way " became a Chriſtian Biſhop to halt with " God.

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" Laſtly he ſaid, It was ſtrange, if he de- " ſigned to introduce Popery, he ſhould have " laboured ſo much to reduce thoſe who were " going, or had gone over to it; and in- " ſtanced in two and twenty Perſons, moſt " of them Men of Condition, whom he had " brought over to, or confirmed in the Pro- " teſtant Religion; and challenged any Cler- " gyman to give a better Proof of his Zeal " to the Eſtabliſhed Church; not doubting, " but he ſhould be able to anſwer, whatever " ſhould be more particularly objected againſt " him.

The ſecond Day. The Managers proceed to make good the Articles againſt him.

The Archbiſhop being brought to the Bar again on the 13th of *March*, the Managers proceeded to make good the firſt and ſecond Original Articles; and the ſecond additional Article; relating to the Subverſion of the Laws introducing arbitrary Power, queſtioning the Authority of Parliaments, advancing the Power of the Council-Table, &c.

His Diary made Evidence againſt him.

To prove this Part of the Charge, Mr. *Maynard* read the following Words out of his Grace's *Diary*, (*viz.*) the 5th of *December*, 1639. *The King declared his Reſolution for a Parliament, in caſe of the* Scotiſh *Rebellion: The firſt Movers of it were my Lord Deputy of* Ireland, *the Lord Marquiſs of* Hamilton *and myſelf; and a Reſolution voted at the Board, to aſſiſt the King in extraordinary Ways, if the Parliament ſhould prove peeviſh and refuſe.* From whence it was urged, he had beſtowed the Epithet of *Peeviſh* on the Parliament; and that the Vote to aſſiſt the King by extraordinary Ways, proceeded from his Advice. The Evidence of Sir *Henry Vane*, the elder, alſo was inſiſted on; who depoſed, that his Grace ſaid to the King, after the riſing of the laſt Parliament, *Now he might uſe his Power.*

Sir Henry Vane.

Alderman *Atkins* depoſed, that when he was brought before the Council about Ship-Money, none was ſo violent againſt him as his Grace.

It was objected to him, that he had aſſerted the King's Proclamations were of the ſame Force as a Statute; and, ſpeaking of the King's Power, he had ſaid, *Whoſoever falls upon it, ſhall be broken; but upon whomſoever it falls, it ſhall grind him to Powder.*

And that, ſpeaking of an Act of Parliament, he ſaid, *That he ſaw nothing would down with them but Acts of Parliament: No Regard at all to the Canons of the Church; and that he would reſcind all Acts that were againſt the Canons; and hoped ſhortly, to ſee the Canons and the King's Prerogative of equal Force with an Act of Parliament.*

He was alſo charged with giving the King Subſidies in Convocation, without Conſent of Parliament; and with ſome other Matters of leſs Moment, to ſupport the three Articles above mentioned.

His Defence to the Charge of the ſecond Day.

To this his Grace anſwered, That he believed the Word *Peeviſh* had been put into his *Diary*, ſince it was taken from him; and if not, he thought it was not impoſſible, that a Parliament ſhould prove Peeviſh.

That it was not ſaid in his Diary, that the Vote *to aſſiſt the King by extraordinary Ways*,

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was his Advice, but that there was ſuch a General Vote of the Council; and beſides, this appeared by the ſame Diary, to be for the *Scotiſh* Buſineſs, which was within the Act of Oblivion.

That he never ſaid, *The King might uſe his Power*, or any other words to that Effect; and if he had, they were not Treaſon; and if they were, there was but one Witneſs of them, and the Law required two in Treaſon: However this alſo related to *Scotland*, and was therefore within the Act of Oblivion.

That as to his preſſing the Payment of Ship-Money, this was after the Judges had given their Opinions of the Legality of it; and beſides, it was the Act of the whole Council, and could not be aſcribed to him in Particular; and it was ſtrange this ſhould be accounted High-Treaſon in him, and not in the reſt. As to the Words, *Whoever falls on that Stone ſhall be broken*, &c. Two of the Witneſſes were Soap-Boilers and Parties, and were ſentenced by the *Star-Chamber* for their Contempt: That the Words were ſaid to be ſpoken above twelve Years ſince, and he believed none of the Managers could think him ſo weak to have ſaid them: However, they were not Treaſon, and he was not anſwerable for every Thing the *Star-Chamber* had done. As to his ſaying, *Nothing would down with them but Acts of Parliament*, &c. this was proved but by a ſingle Witneſs, who was a Party; and though a great Regard ought to be had to Acts of Parliament, yet ſome ought to be paid to the Canons. And as to the giving the Subſidies in Convocation, it was the Act of that whole Body; and the Grant was no other, nor in other manner, than had been granted to Queen *Elizabeth*; and that the Clergy ever had a Power of granting Subſidies.

This Days Hearing being over, his Grace was ordered to appear again on *Saturday* the 16th of *March*, and a Note given him by the Committee, that they intended to proceed next on Part of the ſecond Additional Article, the third Original Article, and the third and fifth Additional Articles, which related to The Advancing the Power of the Council-Table, the Eccleſiaſtical Juriſdiction, &c. But the Hearing was put off to *Monday* the 18th of *March*, when his Grace being brought to the Bar of the Houſe of Lords again, he was charged with cauſing ſeveral Houſes about St. *Paul*'s, to be demoliſhed; to prove which, his Diary was produced; wherein he expreſſes a Deſign of getting that ancient Fabrick repaired: Then three Orders of Council were produced, for compounding with the Tenants, and pulling down their Houſes, if they refuſed to compound.

Third and fourth Day's Trial.

It was further objected, That his Hand was to another Order of Council, for the Goldſmiths to provide themſelves with Houſes in *Cheapſide* and *Lombard-Street:* And one *Eartly* a *Stationer*, who had been put out of his Houſe to make Room for the Goldſmiths, was produced as an Evidence againſt him.

He was charged alſo with forcing People to lend Money for the Repairing of St. *Paul*'s, and with the Impriſonment of one *Vaſſal* by the Council-Board; who *conceived* his Grace to be the Author of it. The Impriſonment of Sir *John Corbet* by the Council-Board, was alſo imputed to him. His projecting to give the Miniſters of *London* ſome Aſſiſtance as to their Tythes, was urged as another Offence, and his Diary produced as an Evidence of it.

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The Impriſoning *Burton*, *Prynne*, and *Baſtwick*, alſo was laid to his Charge; and particularly the cenſuring *Prynne* for Libelling: And laſtly, he was charged with being inſtrumental in removing two Brew-Houſes, that were a Nuſance to the Palace of St. *James*'s.

His Defence to the Charge of the 3d and 4th Day,

To the third and fourth Day's charge his Grace anſwered, That when he came to the Biſhoprick of *London*, he thought himſelf obliged to endeavour the Repair of St. *Paul*'s, which was then ready to ſink into its Ruins, and eſpecially the Body of it; which, by the Local Statutes, the Biſhop was to repair while he enjoyed the Lands that belonged to the Church; and which very well enabled him to do ſo, till ſome ſacrilegious Hands deſpoiled that Biſhoprick of them: And as to the demoliſhing the Houſes that were built upon the Church-Yard, they ſtood ſo near the Church, that the Repairing of it was impracticable, till they were pulled down; and therefore eight or nine thouſand Pounds had been raiſed to compound with the Inhabitants, for taking down thoſe Houſes, though they had no Right to ſtand there: That he could not be charged with miſapplying any of the Money, that had been raiſed for the Repairs; and he had indeed contributed twelve hundred Pounds out of his own Pocket towards the Work; nor had he done any thing in Relation to theſe Repairs, without the Approbation and Order of his Majeſty, or the Lords of the Council; and therefore this ought not to be imputed to him in Particular.

As to obliging the Goldſmiths to keep their Shops in *Lombard-Street* and *Cheapſide*, this alſo was done by Order of Council, and not to be aſcribed to him; and was however very far from High-Treaſon: And for his ſaying in this Caſe, That the Council-Board was not ſo weak, but it might command ſuch Things, he does not remember he ſaid ſo then; but he thought the Council-Table muſt be very weak indeed, if it could not command in things of Decency.

His forcing People to lend Money for the Repair of St. *Paul*'s, he had no Occaſion to ſpeak to, becauſe they did not attempt to prove it.

As to the Impriſonment of Mr. *Vaſſal*, that was alſo an Act of the Council-Board; and *Vaſſal*'s ſaying, He *conceived* his Grace to be the Occaſion of it, was no Proof of it.

The Impriſonment of Sir *John Corbet* alſo was the Act of the Council-Board.

And as to his contriving ſome Support for the *London* Miniſters, he ſhould have been to blame if he had not, when he was their Biſhop;

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ſhop; and their Caſe was indeed very hard, all their Dues being ſhrunk into a poor *Eaſter* Book; and all that he had done in this Buſineſs was, to ſollicit the Citizens voluntarily to yield ſome reaſonable Addition where Right and Neceſſity appeared.

And as to the Cenſure of *Prynne*, that was the Act of the Court of Star-Chamber, and he did not ſo much as give his Vote for that Cenſure.

The Complaint of removing the Brew-Houſes, was very frivilous, conſiſting of ſome little Stories, that ſcarce deſerved mentioning in this Proſecution; or elſe they were of ſome Order of the Council-Board, that could not be charged on him in Particular: And if the Whole had been true, it was but Treaſon againſt a Brew-Houſe. Laſtly, his Grace deſired their Lordſhips to obſerve, That this Day there had been no leſs than thirteen Witneſſes examined againſt him in their own Cauſes; and although many Things had been urged, that concerned the Star-Chamber and Council-Table, the Act for taking away the one, and regulating the other, had no Reſpect to what was paſſed; and yet here Things that were paſſed, and were the joint Acts of the Council or Star-Chamber, and not his, were urged as treaſonable: Whereas the Proviſion made by the late Statute, againſt thoſe who ſhould offend for the future, only made ſuch Offences Miſdemeanors.

5th Day. His Grace being brought before the Lords again on *Friday* the 22d of *March*, it was repreſented by the Committee, That Mr. *Newcommen* of *Colcheſter*, refuſed to adminiſter the Sacrament any where but at the Rails; that *Burroughs*, *the Witneſs*, indicting him for it, his Bill was thrown out, and he was afterwards called before the High-Commiſſion Court for it, by a Warrant from his Grace; that the Mayor would not obey a *Habeas Corpus*, but ſaid he would obey his Grace's Warrant, before the King's Writ; and that a Letter was ſent to Judge *Crawley*, and ſhewed to Judge *Hutton*.

One *Aſk* depoſed, That his Grace protected ſome Players, that were found at a Tavern at an unſeaſonable Time of Night: That there was a Plot to make the Deponent an Inſtrument, about receiving the Sacrament at the Rails: That Letters Miſſive were ſent him by the High Commiſſion, and that applying to his Grace, he told the Deponent, If he was ſo ſtrict againſt Churchmen, he muſt expect to be dealt with as ſtrictly by the High Commiſſion; and that the Deponent went to *Holland*, to avoid the Oath *ex officio*.

He was charged alſo with the Cenſure of the Inhabitants of *Beckington* in *Somerſetſhire*, for refuſing to place the Communion-Table at the upper End of the Church, North and South, according to the Biſhop's Order; which was ſaid to be an Innovation.

Grafton, a *Browniſt*, alſo depoſed, That he was impriſoned twelve Years ago, and fined 50 *l.* and believed he might have been ſet at Liberty ſooner, if it had not been for the Archbiſhop.

The Excommunication of one *Adams*, was aſcribed to his Grace; who had written over the Place where the Commiſſaries Court was kept in the Church, *My Houſe ſhall be called the Houſe of Prayer, but ye have made it a Den of Thieves.*

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He was charged alſo with complaining to the King of Mr. *Bagſhaw*, the Reader of the *Middle-Temple*, and threatening to proſecute him in the High-Commiſſion Court, for aſſerting, *That a Parliament might be held without Biſhops; and that Biſhops might not meddle in Civil Affairs.*

And the laſt Charge of this Day was, that he had cauſed Chief Juſtice *Richardſon* to be checked, for putting down Wakes, and his Orders to be reverſed.

His Defence to the Charge of the 5th Day. To this Part of the Charge his Grace anſwered, That it was not proved Mr. *Newcommen* had any Directions from him for refuſing the Sacrament, but at the Rails: That *Burroughs* was taken up by a Warrant from the High Commiſſion; and that if the Mayor had ſpoken indiſcreet Words, he was not anſwerable for them.

That his Grace knew nothing of any Players, as Mr. *Aſk* depoſed: That the Letters Miſſive were the Act of the High Commiſſion, and could not be charged on him. That the Oath *ex officio* was the legal way of proceeding in that Court; and he could not help the tendering it to *Aſk*, who was a *Separatiſt*, and knowing himſelf guilty, durſt not appear.

As to placing the Communion-Table of *Beckington*, at the upper End of the Chancel, North and South, this was no Innovation; Queen *Elizabeth* having placed it ſo in her own Chapel; and that if the Church-Wardens were excommunicated for their Contempt, in not obeying their own Biſhop, this was none of his Act.

That *Grafton*, the *Browniſt*, was fined and impriſoned by the High-Commiſſion Court, and he was not then a Commiſſioner, nor was there any Proof of his being detained in Priſon by his Grace's Means.

That the Excommunication of *Adams* was no Act of his; but he thought he well deſerved to be excommunicated: And he acknowledged he did complain of *Bagſhaw*, and ſhould have been to blame if he had not, as the Conſtitution then was; and if he did tell him he ſhould anſwer it in the High-Commiſſion Court, This was no Treaſon.

And laſtly, It was the Lord-Keeper *Coventry* that commanded the Chief Juſtice's Order about Wakes to be revoked, which not being complied with, there was an Order of Council for the Chief Juſtice's revoking it; but this could not affect the Archbiſhop, who was of Opinion however, That, though theſe Wakes and Feaſts of Dedication were ſometimes abuſed, this was not a ſufficient Reaſon for taking them away.

Thus ended the 5th Day's Hearing, and *6th Day.* his Grace being brought to the Bar again, on *Thurſday* the 28th of *March*, was charged with the Cenſure, Deprivation, and Impriſonment of Mr. *Huntley*, a Clergyman, and telling his Attorney he deſerved to be laid by the Heels.

That his Grace threatened and impriſoned thoſe who brought Prohibitions; and when *Prynne* brought a Prohibition, he ſaid that he

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would lay him by the Heels that brought the next: That he wondered who durſt grant Prohibitions, the High-Commiſſion Court being above all.

The next Charge was that of Bribery, and his obliging Sir *Edward Greſham* to give half the Penalty of a Bond of 200 *l.* which the Court aſſigned him, to the Repair of St. *Paul*'s. That the *Cheſter* Men being fined 1000 *l.* for feaſting of *Prynne*, his Grace, for a Bribe of two Hogſheads of Sack, procured the Fine to be leſſened to 200 *l.* And his Secretary received 150 *l.* to get his Hand to a Petition to the Lord Keeper.

That he made uſe of the Name of St. *Paul*'s to procure himſelf Money illegally, and that he had illegally applied the Money given to the Repair of St. *Paul*'s.

His Defence to the Charge of the 6th Day.

To this Charge of the 6th Day his Grace anſwered, That what had been done againſt *Huntley*, was done by the High Commiſſion, and that this Proſecution was in Archbiſhop *Abbot*'s Time: That his Attorney deſerved to be committed, for his contemptuous Behaviour, and was committed by the Lords of the Council for it. And here his Grace took leave to remind their Lordſhips, that there had been nothing tranſacted at the Council-Table, the Star-Chamber, or High Commiſſion, but ſuch Cauſes as had been determined there in the Reigns of Queen *Elizabeth* and King *James*; and that no Man had been ſo much as accuſed of a Miſdemeanor for what had been done there hitherto, much leſs of High-Treaſon.

He ſaid he thought it no Offence to complain to the King, who was the Fountain of Juſtice in both Courts, when Prohibitions were unjuſtly granted: And if he threatened to lay him by the Heels that brought the next, it was but a haſty Expreſſion, and not done; nor had any Perſons been committed for bringing Prohibitions, though they might ſometimes for their contemptuous Behaviour: There had been as many Prohibitions allowed in his ſeven Years, as in any ſeven Years of his Predeceſſors: That there was a great Difference between Prohibitions now, and in the Times before the Reformation; for then they were granted to reſtrain a foreign Juriſdiction, but now they were both the King's Courts, and there could not be that Reaſon for them as formerly: However, all that he had done was to endeavour that ſome Bounds might be ſet to each Court, that the Subject might not, to his great Trouble and Expence, be hurried from one Court to another; and took Notice, that Archbiſhop *Parker*, in the Beginning of the Reformation, had ſhewn that great Wrong was done to the Eccleſiaſtical Juriſdiction by Prohibitions.

As to the Corruption he was charged with, in the Caſe of Sir *Edward Greſham*'s Son, who married againſt his Conſent: That he had voted for greater Damages to Sir *Edward*, but it was given againſt him: That the Bond mentioned was entirely in his Grace's Power, and he might have applied the whole to charitable Uſes, and therefore there was no Colour to charge him with Corruption in that Matter: That indeed he did get the *Cheſter* Men's Fine abated from 1000 *l.* to 200 *l.* and that afterwards Mr. *Stone* did ſend him two Hogſheads of Sack, which he was very unwillingly prevailed on by Mr. *Wheat* (Mr. *Stone*'s Son-in Law) to receive, as a Teſtimony of their Gratitude, and this Mr. *Wheat* atteſted in Court. 1644. 19 Car. I.

As to his Secretary's receiving 150 *l.* he ſaid he muſt anſwer for it, who thereupon called a Witneſs, and very handſomely cleared himſelf of the Aſperſion.

He denied his raiſing Money illegally for St. *Paul*'s; but ſaid his Majeſty had given him the Fines of the High Commiſſion towards thoſe Repairs; and that it was as lawful to commute in that Court as another; and it had been the Practice to commute, where the Offenders were Men of Quality.

Laſtly, as to his having illegally applied the Money given for the Repair of St. *Paul*'s, this he ſhewed to be entirely a Miſtake. After which his Grace was ordered to appear again, the 4th of *April*, and received a Note from the Committee, that they intended to proceed on the 5th and 6th Original Articles, and on the 9th Additional Article, which charge his making Canons contrary to the King's Prerogative, and the Laws, and eſtabliſhing in himſelf and his Succeſſors an unlawful Authority: With his aſſuming a papal and tyrannical Power, in Matters Eccleſiaſtical and Temporal, denying his Eccleſiaſtical Power to be derived from the Crown, and framing an unlawful Oath.

7th Day.

His Grace being brought to the Bar again the 16th of *April*, was charged with the making Canons in Convocation, after the Parliament was diſſolved, *&c.* And to prove he had aſſumed Papal Power, ſome Letters from the Univerſity of *Oxford* were produced, wherein his Grace is ſtiled, *Sanctitas tua*, and *Spiritu ſancto effuſiſſime plenus*, *Summus Pontifex*, &c. That he had ſaid, *The Clergy were now debaſed; that heretofore it was otherwiſe, and he hoped to ſee it ſo again.* And laſtly, that he brought Sir *Richard Samuel* into the High Commiſſion, for doing his Office of Juſtice of Peace upon ſome Clergymen; and that one of the Articles againſt him was, *His being an Enemy to the Clergy.*

His Defence to the Charge of the 7th Day.

To this his Grace anſwered, That the Convocation might legally ſit after the Diſſolution of the Parliament, being called by a different Writ from that, which called the Biſhops to Parliament, nor could they riſe 'till his Majeſty ſent another Writ to diſcharge them: That it was not at the Deſire of his Grace they continued ſitting; however, the Judges had given their Opinions they might legally ſit: That as to the Biſhop of *Glouceſter*'s being committed for refuſing the Oath, it was done by an order of Council; and the principal Obſtacle to his ſubſcribing, was the Canon made againſt the Growth of Popery: And as to the Oath, the Canons in King *James*'s Time had enjoined ſeveral Oaths to be taken by Church-Wardens, and others, and yet neither thoſe Canons, or Oaths, had ever been

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been declared illegal by any enſuing Parliament, or the Makers of them accuſed of any Crime, much leſs Treaſon; and his Grace was about to ſhew that there was nothing in theſe laſt Canons contrary to Law: But their Lordſhips would not ſuffer him to contradict what both Houſes had voted; to which his Grace replied, That he conceived the Lords were as much concerned in Honour, as he was in Point of Safety, that no Charge ſhould be brought againſt him, which he ſhould not be at Liberty to anſwer; and inſiſted, that theſe Canons, being made in full Convocation, could not be aſcribed to him in particular, whatever Conſtruction was put upon them.

As to his aſſuming Papal Power, and the Proof that was brought of it, The Univerſity of *Oxford*'s giving him the Papal Titles, he ſaid, the Title *Sanctitas tua* was not appropriated to the Pope, but frequently given to other Biſhops, both *Greek* and *Latin*; and as to the Stile of *Summus Pontifex*, this was no unuſual Stile of the chief Prelate of any Nation; and that theſe Titles were given him by others, who muſt be anſwerable for them; they were never aſſumed by him: Beſides, he thought it one Thing to aſſume a *Papal Title*, and another to aſſume *Papal Power*.

He did not remember he had ever ſaid, he hoped for to ſee the Clergy exempted from the Civil Magiſtrate; but if he had, he could only mean it of an Exemption from Oppreſſion: He might ſay indeed, *That the Clergy were now debaſed; that heretofore it was otherwiſe, and he hoped to ſee it again; and he thought there was no great Hurt in that.* He was alſo charged, he obſerved, with procuring ſome Clergymen to be made Juſtices of Peace, and with recommending Biſhop *Juxon* to be Lord Treaſurer; but he did not apprehend there was any Crime in this, much leſs High-Treaſon, as he aimed at the Service of the King, and the Good of the Church in it.

As to his proſecuting Sir *Richard Samuel*, for doing his Office of Juſtice of Peace on ſome Clergymen, he obſerved this was proved only by Sir *Richard*, who was a Witneſs in his own Cauſe; and beſides, the Proſecution was by the High Commiſſion, or the Council-Table, and ſo not chargeable on his Grace; and it did appear he oppreſſed the poor Clergymen, his Neighbours, which was not a genteel Part of a Man in Power.

This Day's Hearing being over, the Archbiſhop was ordered to attend again, the 22d of *April*, which he did, but was ſent back, and nothing done any more, than on the 25th and 30th of *April*, when he attended likewiſe, at the Expence of ſeven or eight Pounds a Day.

8th Day.

On *Saturday*, *May* the 4th, his Grace was brought to the Bar agan, when Mr. *Nicholas*, the Manager, again reproached him with the high Titles he had ſuffered the Univerſity of *Oxford*, and others, to confer upon him, and then proceeded to enforce that Part of the Charge, in Relation to his endeavouring to exempt the Clergy from the Civil Power; for Proof whereof they cited Part of a Speech of his Grace's in the *Star-Chamber*, wherein he adviſes them to take Care not to cauſe the Laws of the Church, and the Kingdom, to claſh: Another Proof was a Suggeſtion that he cauſed ſome Juſtices of the Peace to be ſummoned before the High-Commiſſion, for keeping their Seſſions at *Tewksbury* in a Part of the Church; and as a further Evidence of this Charge, they ſaid, When the Mayor of *Oxford* had ſet the Watch, they were diſturbed by the Proctors, and a Conſtable impriſoned, and that his Grace refuſed to refer the Matter: That he had alſo formed a Project to aboliſh all Impropriations: That he had introduced ſeveral new and exorbitant Clauſes into the High Commiſſion: And laſtly, That he had illegally extorted a Patent from the King, for the Fines in the High Commiſſion, towards repairing St. *Paul*'s.

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To this his Grace anſwered, That he did not think it amiſs to adviſe that the Laws of the Church, and the State, ſhould not claſh; which might well ſtand together, if ſome did not ſet them at odds; and as for the Juſtices of Peace being called before the High Commiſſion, for keeping their Seſſions in a Church, he thought it a great Profanation; though Men in this Age were grown ſo bold with Churches, as if the Profanation of them was no Fault at all: However, there was no Proof of his cauſing this Proſecution.

His Defence to the Charge of the 8th Day.

That as to the *Oxford* Watch, It was an ancient Privilege of that Univerſity; but being lately diſputed by the Townſmen, they applied to his Grace, as their Chancellor, and he did agree to refer it to the Judge of the Circuit; but his Troubles coming on, they refuſed to ſtand to the Award, and would have had another Reference: As to his Project of buying Impropriations, or prevailing with his Majeſty to give ſuch as were in his Power, to the Support of the Church of *Ireland*, and which were daily begged by private Perſons; This he did not think needed a Defence, any more than his propoſing to ſettle ſome fixed *Commendams* on the ſmaller Biſhopricks, which was made another Article againſt him.

As to the Clauſes that were ſaid to be added in the High Commiſſion, his Grace ſhewed, that they were in the former Commiſſion; and whatever Power that Court exerciſed, it was not aſſumed, but granted by his Majeſty; and though the Manager had compared his Grace to Pope *Boniface* VIII. as if he took on him the Power of both Swords, the Caſe was widely different; for that the Pope claimed them as originally due to him, and theſe Commiſſioners under the Prince, and by his Authority.

And laſtly, as to his having illegally extorted a Patent from the King, for the Fines in the High Commiſſion, his Majeſty's Piety was ſo forward in that Matter, that nothing need be extorted from him: And his Grace ſhould always look upon his Endeavours to have St. *Paul*'s repaired as honeſt and honourable; neither could any Man, after the ſtricteſt Search, charge him with miſapplying a Penny of the Money.

This Hearing being ended, he was ordered to appear again the 9th, and then the 13th of *May*, both which Days he attended, and ſtood expoſed to the Scorn and Laughter of the Mob, and was at length diſmiſſed unheard, though not without a conſiderable Expence.

His

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9th Day.

His Grace being brought to the Bar again, the 16th of *May*, was charged with preſenting a blind Man to a Living of Sir *Arthur Haſlerigs*, which was an Impropriation, and a Lay Fee, and with ſaying, If he lived, no Man ſhould ſtand upon his Lay Fee: That he had illegally deprived one *Fautrye* for Simony, the High Commiſſion having no Power over Freeholds: That he had altered the Statutes of the Univerſity of *Oxford*, taking upon himſelf to be an Univerſal Lawgiver: That he had illegally made new Statutes for Cathedral Churches; and ordered that nothing ſhould be done on thoſe Statutes, without adviſing with him. His Injunctions for the Viſitation of *Winton* alſo were complained of, requiring the pulling down ſeveral Houſes that were upon conſecrated Ground; and his Intention of viſiting the two Univerſities: Then he was charged with the Cenſure of *Baſtwick*, for a Book he wrote againſt Biſhops; and with ſaying, *That Chriſtian Biſhops, were before Chriſtian Kings.*

His Defence to the Charge of the 9th Day.

His Grace anſwered, That the Living he preſented to, (ſaid to be Sir *Arthur Haſlerig*'s) was not a Lay Fee; and his Words were, *That no Man ſhould make a Preſentative Benefice a Lay Fee:* That *Fautrye* was legally cenſured and deprived by the High Commiſſion, which had a Power of Deprivation, by the expreſs Words of the 1 *Eliz. cap.* 1. That as to the Statutes of the Univerſity of *Oxford*, they lay in a miſerable Confuſion; and it was the great Neceſſity of it that put him upon that Work; neither had he done any Thing in it, but by the Conſent of the Univerſity; and thought, he deſerved rather the Thanks of the publick, than to be proſecuted for it: That there were no illegal Innovations introduced, as had been ſuggeſted, nothing but what had been put in Practice, and approved before his Time: That theſe Statutes were confirmed by the Broad-Seal, made by the King's Power, and not by any Papal Power he had aſſumed, as was urged againſt him. That the Statutes of ſome Cathedral Churches alſo required great Alteration; and there was Reaſon he ſhould be conſulted about them, as his Majeſty had entruſted his Grace chiefly with that Matter, and expected an Account from him. That the Houſes ordered to be demoliſhed at *Wenton*, were new erections upon conſecrated Ground, and were not to be taken down, till the Leaſes were expired; and this was to be done according to the Statutes of the Kingdom, and not otherwiſe.

As to his Intention of viſiting the Univerſities, it would not have been unlawful, as he had the King's Warrant for it; and it appeared, that three of his Predeceſſors did actually viſit the Univerſities.

That Mr. *Baſtwick* was cenſured by the High Commiſſion, which could not affect him in Particular; and that no body doubted, but Chriſtian Biſhops were before Chriſtian Kings: And whereas he was charged with ſaying, *No Biſhop, no King*; that was an Expreſſion of King *James*'s: And though he had affirmed, the Order and Calling of a Biſhop, to be from God and Chriſt, and by Apoſtolical Right; yet he held this Juriſdiction might not be exerciſed, but by the Leave and Power of the King, within whoſe Dominions they were.

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10th Day.

His Grace attending again the 20th of *May*, the Committee proceeded on the 6th and 7th Original Articles; which charge, That his Grace *had traiterouſly endeavoured to alter, and ſubvert God's true Religion*; which they endeavoured to prove by ſome Alterations he had made in his Chapel at *Lambeth*; as his turning the Table North and South, repairing the Windows with coloured Glaſs, and imitating the Pictures in the Maſs Book; that he uſed Bowings at his coming into the Chapel, and going up to the Altar; and the Organs, Candleſticks, the Hiſtory Piece at the Back of the Altar, and the wearing Copes at Communions and Conſecrations, were brought in, to ſupport the Charge. Another Inſtance produced, to ſhew his Intentions of altering Religion, was, his conſecrating the Communion Plate. A Bible that was found in his Study, with the five Wounds of our Saviour wrought on the Cover; a Miſſal, and other Books relating to the Popiſh Liturgy, and his own Prayer-Book, where the Times of Prayer were appointed at Canonical Hours, were held to be ſufficient Evidence of his Deſign to introduce Popery. The Pictures of the Fathers in the Gallery, and a Dove over one of them, (which they ſaid ſtood for the Holy Ghoſt) and an *ecce homo*, or *Pilate* bringing forth Chriſt, were all looked upon as Proofs of his Popery.

His Defence to the Charge of the 10th Day.

His Grace anſwered, as to the Alterations in his Chapel, that it lay before in a very indecent Manner; that he had ſet the Table North and South, according to Queen *Elizabeth*'s Injunctions, and they were guilty of Innovations who ſet it otherwiſe; that the Windows were miſerably patched; and he did, by the Aſſiſtance of his Secretary, diſcover the Story by what remained, and got them repaired, but not by the Miſſal, as was ſuggeſted; they contained the whole Story from the Creation, to the Day of Judgment; and he did not believe this was in the Miſſal: And even *Calvin* was of Opinion, that Pictures and Images might be of Uſe to inſtruct the People; and that both in King *Edward*'s and Queen *Elizabeth*'s Reign, ſuch Pictures were allowed; that Bowings alſo were uſual in Queen *Elizabeth*'s Time, and if he muſt bow to Men, in either Houſe of Parliament, muſt he not bow and worſhip God in his own Houſe, though there were neither Altar or Communion-Table in it? That Organs, *&c.* were in the Royal Chapels in the laſt Reigns; and that in all Ages of the Church, the conſecrating the ſacred Veſſels, as well as Churches, had been uſed. And if there can be no Dedication of theſe Things to God, no Separation of them from common Uſes, then neither the Things or Place were Holy; and there would be no ſuch Thing as Sacriledge, no Difference between a Church and a common Houſe, between holy Tables and ordinary Tables:

That

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That St. *Paul*'s Queſtion puts the Matter Home, if they would conſider it, *Thou which abhorreſt Idols, doſt thou commit Sacriledge?* Thou who abhorreſt Idols to the very defacing of Church Windows, doſt thou of all others commit Sacriledge, which the very Worſhippers of Idols puniſh? As to his Prayer of Dedication, this was not taken from the Miſſal, but from one uſed by Biſhop *Andrews*. The Bible mentioned, was a preſent from a Proteſtant Lady, and never ſeen out of his Study, by any one who might be offended at it: That he had alſo a Miſſal and other Popiſh Books, but more of the *Greek* Liturgies than the *Roman*; and he did not know how he ſhould anſwer their Errors, if he might not have them. That he had alſo the *Alcoran* in divers Copies, and they might by the ſame Rule conclude him a *Mahometan*. And as to their expoſing his private Prayers, he thought this was not to be paralleled in any Heathen Nation. If he had enjoined, himſelf, his Prayers, at Canonical Hours, he hoped there was no Sin in it; and if his Prayer at the Conſecration of *Hammerſmith* Chapel might be read, no Offence could be taken at it. If he had been ſo addicted to Popery, as they ſuggeſted, It was a wonder the diligent Mr. *Prynne* had found no Prayers to the Bleſſed Virgin, and the Saints, among his Papers.

That as to the Dove, repreſenting the Holy Ghoſt, this was more than the Witneſs could depoſe; and as to that and the *ecce homo* he anſwered out of *Calvin*, That it was lawful to make a Picture of any thing that might be ſeen. And laſtly, theſe Pictures had remained in the Gallery, ever ſince the Reign of Queen *Mary*; nor had any of his Predeceſſors, during the Time of Queen *Elizabeth*, or King *James*, thought fit to remove them. And as to the Bowings he was reproached with, he was ſorry any Reverence in God's Houſe could be thought too much; but it was the Devil's Cunning, when he ſaw Superſtition thrown out of the Church, to bring in Irreverence and Prophaneneſs. As to the Crucifix in the Altar-piece, there had been one in the old Hangings for thirty Years before, which had never given Offence.

After this Hearing was ended, his Grace was ordered to attend another Day, when nothing was done; but he was ſo fortunate, at laſt, to get an Order to the Committee of Sequeſtrations, to receive 200 *l.* out of his own Eſtate; which was all they ſuffered him to take out of the Profits, in the two Years it was under Sequeſtration.

11th Day.

At another Hearing on *May* the 27th, they renewed their Charge againſt the Windows in *Lambeth* Chapel; particularly they obſerved, that there was a Picture of God the Father in them; and *Prynne* depoſed, that his Grace had a Book of Pictures, containing the Hiſtory of our Saviour. They alſo urged, that the Ceremonies uſed at the Coronation were ſuperſtitious; and that he had taken upon him to alter the Coronation Oath. That his Grace ſuffered the Picture of the Bleſſed Virgin, to be painted on the Church Door of St. *Mary*'s in *Oxford*; and that Copies, Bowings, Pictures, and Candleſticks, were uſed at *Oxford*, and in ſeveral Pariſh Churches, and the Communion-Table placed Altar-wiſe; which they held to be ſufficient Evidence of his introducing Popery.

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To this his Grace anſwered, That the Picture of God the Father, ſaid to be in *Lambeth* Windows, appeared to be a Miſtake from their own Witneſſes: And for the Pictures in his Book, it was neceſſary he ſhould have them, there being ſome Things to be diſcovered from the Pictures, the Papiſts allowed their People, which their Writings did not, or perhaps durſt not avow. And as to the Ceremonies uſed at the Coronation, and the Coronation Oath, he ſhewed they were the ſame as in the preceding Reign; adding, that his Predeceſſor was then Archbiſhop, and performed the Solemnity.

His Defence to the Charge of the 11th Day.

As to the Virgin *Mary*'s Picture at *Oxford*, he neither ordered it, or knew of it till it was done; nor had he heard of any Abuſe or Diſlike of it ſince: And as to the Buſineſs of the Communion-Table, Copes, Bowings, Candleſticks, *&c.* he had already anſwered that Part of the Charge.

His Grace being brought to the Bar again the 6th of *June*, great Part of the Charge of the Day before was repeated, and they accuſed him of promoting ſeveral ſevere Sentences in the high Commiſſion; and particularly one againſt Mr. *Workman*, for preaching againſt Images; and another againſt Mr. *Sherfield*, for defacing a Church Window at *Saliſbury*; wherein was the Picture of God the Father: And that his Chaplain Dr. *Bragge*, refuſed to licenſe Dr. *Featley*'s Sermons, till a Paſſage againſt Images was ſtruck out.

12th Day.

To this his Grace anſwered, That Mr. *Workman* was not cenſured for preaching againſt Images, but for affirming, That the Election of Miniſters was in the People; for preaching conſtantly againſt the Government of the Church; praying for the States of *Holland*, and the King of *Sweden*, before his Majeſty; and raiſing ſuch a Faction in *Glouceſter*, that the High Commiſſion did not think it proper, he ſhould remain any longer there.

His Defence to the Charge of the 12th Day.

As to Mr. *Sherfield*'s defacing the Church Window, it did not appear there was any Picture of God the Father in it; and if there had, It was not for private Men to demoliſh Churches or Church-Windows; but if there was any ſuperſtitious Pictures in them, they ought to complain to Authority: And beſides, theſe Cenſures were the Acts of the High Commiſſion, and could not be charged upon his Grace.

And as to the refuſing to licenſe Dr. *Featley*'s Sermons, till a Paſſage againſt Images were ſtruck out, he left the Care of the preſs to his Chaplains, as his Predeceſſors had done: Whether ſuch a Paſſage was expunged, he knew not; but there were Paſſages as full againſt Images and Popery, left in Dr. *Featley*'s Sermons, as any that could be ſtruck out; where he ſtiles the Papiſts *Idolaters*, as groſs as the *Baaliſts*; and calls the Pope *Antichriſt, and the Whore of* Babylon.

At the Concluſion of this Hearing, his Grace complained of a Paper called *The Diurnal*, wherein he was ſcandalouſly abuſed; and ob-

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ſerved, that it had been affirmed, in this and other Papers, that the whole Charge had been proved againſt him, which their Lordſhips knew to be falſe: But his Complaints were very little regarded.

13*th Day.*

His Grace being brought to the Bar again, the 11th of *June*, the Managers proceeded to give Evidence of his Attempts to ſubvert the Eſtabliſhed Religion, of which his Conſecration of two Churches, *viz.* St. *Katherine Cree-Church*, and St. *Giles*'s *in the Fields*, were ſaid to be Inſtances. The Witneſſes depoſed, that he came in a pompous Manner to perform the Ceremony, and at his Approach to the Church Door, cauſed the following Paſſage out of the *Pſalms* to be read, (*viz*) *Lift up your Heads O ye Gates, and be ye lift up ye everlaſting Doors, and the King of Glory ſhall come in.* That he kneeled down at his coming in, and uſed many Bowings and Cringes, threw Duſt into the Air, and uſed ſeveral Curſes, in Imitation of the Pontifical, taking alſo one of his Prayers from thence; and at laſt pronounced the Place Holy. He was charged alſo with the Conſecration of Chapels, and giving the Name of St. *John* to his own Chapel; and a Paper was read, ſaid to be a Liſt of his Chapel Furniture, wherein Wafers were mentioned inſtead of conſecrated Bread.

The publiſhing the Book of Sports was alſo urged as a Piece of Popery, and his puniſhing ſeveral of his Clergy for not reading it, as another Offence, Sir *Henry Mildmay*, and *Anthony Mildmay* depoſed, that his Grace was hated by one Faction at *Rome*, and loved by another; and, though he was but an obſcure Man, they obſerved, within theſe 15 Years, there was a ſtrong Opinion of a Reconciliation between the Churches of *Rome* and *England* ſince his Advancement.

His Defence to the Charge of the 13th Day.

To the Charge of this Day his Grace, anſwered, That, as to the Pomp of the Conſecrations mentioned, he was only attended by ſome few Officers of the arches, who uſually attended their Dioceſan: And though the Managers frequently repeated thoſe Words, *Lift up your Heads*, &c. *that the King of Glory may come in*, as if he had applied them to his own Perſon: It was a Paſſage antiently uſed at Conſecrations, and related to God Almighty, the true King of Glory; who, at the Dedication, took Poſſeſſion of the Place, by his Servant the Biſhop: And as to his Bowing and Kneeling, he looked upon this as his Duty, let them call it what they would: That there was no throwing Duſt in the Air, or Curſes uſed: And he obſerved, that one of the Witneſſes depoſed, That this Ceremony was performed at the Beginning, and the other, at the End of the Service; and therefore their Evidence was inconſiſtent. That he did not follow the Pontifical, but a Copy left by Biſhop *Andrews*, which he had ready to produce: That there were ſeveral Prayers in the Miſſal, the ſame with our Collects; which were, notwithſtanding, confirmed by our Laws; for though we had ſeparated the Chaff, we ought not to throw away the good Grain; and wiſhed only, that true Religion might remain, till it was overthrown by the Conſecration of Churches: That there was the ſame Reaſon for the Conſecration of Chapels as Churches; and theſe were things uſed long before the Times of Popery: Nor did he apprehend there was any Crime in giving a Chapel the Name of ſome Saint or Angel for Diſtinction Sake, and in Honour to their Memories: This was a very ancient Cuſtom, as appeared from St. *Auſtin* and other Fathers: And as to the Paper that had been read, as a Liſt of his Chapel Furniture, this was the Model of Biſhop *Andrew*'s Chapel, and nothing of it his Grace's own Hand, but the Indorſement; though *Prynne* had ſworn it to be a Particular of the Furniture of the Archbiſhop's Chapel in his own Hand: And indeed, he never gave, or received the Communion in any Thing but common Bread.

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As to publiſhing the Book of Sports and Recreations on *Sundays*, this was done by the King's Authority; that he was always for keeping the Day Holy, but free from a ſuperſtitious Holineſs: That Recreations were not allowed, till after Evening Service; and then, only to thoſe, who had been at Divine Service Morning and Evening: And if Recreations were not lawful after Divine Service, why were they allowed and encouraged at *Geneva*, where the elder Men went to Bowles, and the younger to the Exerciſe of their Arms: And *Calvin* gave it as one Reaſon of Inſtituting the *Sabbath*, *That Servants might have a Day of Reſt and Remiſſion from their Labour:* And what Manner of Reſt was that, where able young Men might uſe no Recreations? That ſome had indeed been ſuſpended *ab officio*, for not reading the Book, when his Majeſty required it; but none had their Livings ſequeſtred on that Account: *Wilſon*, one of the Witneſſes, was ſequeſtred for Delapidations, and not on Account of his refuſing to read the Book; and *Culmer*, the other Witneſs, for Piſſing in the Body of the Cathedral at *Canterbury*. Beſides, theſe Men were ſequeſtred by the High Commiſſion, and not by himſelf: And laſtly, it was an Obſervation of Calvin's, *that thoſe Men, who ſtood ſo ſtrictly for the Morality of the* Sabbath, *did, by groſs and carnal Sabbatization, thrice out-go the Superſtition of the* Jews.

As to Sir *Henry Mildmay*'s Depoſition, he obſerved, that he had formerly declared, That his Grace was the moſt hated at *Rome*, of any one that had ſat in the See of *Canterbury*, ſince the Reformation: And as for his being an obſcure Perſon till within theſe fifteen Years; he had been a Biſhop twenty-three Years, and it was eighten ſince he was made Dean of his Majeſty's Chapel; and, if a Character given him by his Enemies, either maliciouſly or ignorantly, was ſufficient to ground a Charge of this Nature upon, it might lie in the Power of two or three Jeſuits, to deſtroy any Biſhop in *England:* And, after all he much queſtioned, Whether Sir *Henry Mildmay*, had ever been at *Rome*.

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14th Day.

At another Hearing the 17th of *June*, he was accuſed as being the Occaſion of *Damport*'s leaving his Benefice, and retiring to *Holland*; and with ſaying, (when he heard he was in *New-England*) *That his Arm ſhould reach him there.*

That one *Nathaniel Wickens* had been impriſoned nine Weeks, only for being a Servant to Mr. *Prynne*; that upon his refuſing the Oath *ex officio*, his Grace ſaid, The Charge ſhould be taken *pro confeſſo*; and that his Friends were refuſed a Sight of the Articles againſt him.

His Grace was alſo charged with ſtopping Books at the Preſs, and expunging Paſſages out of them; and particularly the *Engliſh* Bible with *Geneva* Notes: And that he had uſed his Power, to ſuppreſs ſome Books in *Holland:* That he ſuppreſſed an Almanack, that left out the Apoſtles and Saints, and inſerted the Martyrs of Queen *Mary*'s Reign in their Stead.

His Defence to the Charge of the 14th Day.

His Grace anſwered, as to *Damport* the Clergyman's leaving his Benefice and flying to *Holland*, it appeared by the Evidence, That he went away upon a Summons from the High Commiſſion; that his Grace had prevented a Proſecution againſt him once, but he was not obliged to do it always; and that he was a dangerous and factious Man, nor was it fit the Plantations ſhould protect ſuch.

That as to *Prynne*'s Man, he was impriſoned for refuſing the Oath *ex officio*; and it was the conſtant Practice of the High Commiſſion, the Star-Chamber and the Chancery, to take the Charge *pro confeſſo*, where the Party refuſed to anſwer upon Oath; nor did the High Commiſſion ever grant a Copy of the Articles, till the Party took the Oath *ex officio.*

That as to his ſtopping the Bibles with *Geneva* Notes, thoſe Notes were very partial, ſeditious, and dangerous, and of late uſed to very ill Purpoſes; for which Reaſon the High Commiſſion had been more ſevere againſt them than formerly: That they had alſo reſtrained the Importing Bibles from *Holland*, becauſe it was a great Diſcouragement to the *Engliſh* Printers; and that the States were prevailed on to ſuppreſs ſome ſeditious Libels againſt the State and Church of *England*, that had been printed in *Holland.*

15th Day.

His Grace being brought from the *Tower* to *Weſtminſter* every Day to his Trial, relates, that at his landing, he was generally ſaluted with reproachful Language, and particularly by one *Quarterman*, who this Day cried out, *What do the Lords mean to be troubled ſo often with this baſe Fellow? They would do well to hang him out of the Way.* Nor was *Nicholas* the Manager leſs ſcurrilous, when his Grace appeared at the Bar, giving him worſe Language, than a Man of any Education would have given to his Slave.

To prove the Charge of Popery againſt him this Day, they produced a Letter, found in his Grace's Study, that had been written from a Jeſuit to his Superior; wherein the Jeſuit ſaid, That Arminianiſm was their Drug, and their Plot againſt the Proteſtants: And urged, That his Grace was the great Supporter of the Arminians; that he diſcouraged Lecturers who preached againſt it; and that he had taken upon him to alter the Prayers for the 5th of *November:* And laſtly, That his Grace had refuſed to licenſe a Book of Sir *Anth. Hungerford*'s, and referred him to one of his Chaplains.

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His Defence to the Charge of the 15th Day.

The Archbiſhop anſwered, If it was a Crime for a Miniſter of State, to ſeize the Jeſuits Letters, how ſhould they detect their Plots againſt Religion: That the Letter was not directed to him; and he did not ſee how he could be charged with any Thing the Jeſuits ſaid in their Letters: That it could never be for the Peace of the Church; to allow factious and humourſome Lectures: And if he had altered the Prayers for the 5th of *November* in ſome little Matters, his Accuſers ought to remember, they had not only altered, but taken away, this and the whole *Liturgy* of the Church of *England*, which had been ſo long eſtabliſhed by Act of Parliament; and aboliſhed Epiſcopacy, which had continued in the Church of Chriſt above ſixteen hundred Years.

As to his refuſing to licenſe Sir *Anth. Hungerford*'s Book, he left theſe things to his Chaplains, as his Predeceſſors had always done: It was impoſſible they ſhould peruſe every Book themſelves.

16th Day.

On the 27th of *June* his Grace was charged with the following Paſſages out of a Speech he made in the *Star-Chamber*; from whence the Managers ſaid, it was evident he held Tranſubſtantiation, *(viz.) The Altar is the greateſt Place of God's Reſidence on Earth, greater than the Pulpit; for there it is,* hoc eſt corpus meum, This is my body, *but in the other it is at moſt* hoc eſt verbum meum, This is my Word; *and a greater Reverence is due to the Body, than to the Word of God.*

He was alſo charged again, with licenſing Popiſh and Arminian Books, and ſuffering his Chaplains to preach and print Arminian Doctrines.

His Defence to the Charge of the 16th Day.

To this his Grace anſwered, That Mr. *Nicholas* the Manager, confounded Tranſubſtantiation with the real Preſence: That *Calvin*, who was an Enemy to Tranſubſtantiation, yet held a real and true Preſence: That St. *Paul* obſerves a great Sin was committed in his Time, *In not diſcerning the Lords Body*, when unworthy Communicants received: That this was at the Holy Table or Altar, St. *Paul* ſays, they received, yet did not diſcern the Lord's Body; and yet he did not think St. *Paul* maintained Tranſubſtantiation: That the Communion was ever held to be the Touch-ſtone of Religion. All Divines agreed with what our Saviour taught, *Matt.* xxvi. 26. That the Paſſion of Chriſt, and this bleſſed Sacrament, have the ſame Effect, where the latter is worthily received.

He ſaid, he did not know his Chaplains preached or printed Popiſh or Arminian Doctrines, or licenſed any Book that maintained them; but if they did, they were anſwerable for it.

This Day an Order was made for removing all the Archbiſhop's Books from Lambeth; *and*

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and it is ſaid, they were given to the infamous Hugh Peters, Cromwell's *Chaplain.*

The next Thing inſiſted on, was, his Grace's preferring none but Men Popiſhly affected; or thoſe, who promoted Ceremonies and the Arminian Doctrine; inſtancing in Archbiſhop *Neile*, Dr. *Bray*, Dr. *Pierce*, and other celebrated Clergymen.

Then they charged him with cauſing many pious and learned Divines to be ſilenced, deprived, *&c.* according to the eleventh Original Article. They alſo went upon the ſixth Additional Article, which charges him with hindering and buying in of Impropriations.

His Defence to the Charge of the 17th Day.

To theſe Articles his Grace anſwered, That moſt of the Clergymen, mentioned to be preferred by him, were preferred by others; neither did he know they held Popiſh or Arminian Doctrines: That none were ſilenced or deprived, but factious Preachers and Lecturers, and theſe moſt of them by other Biſhops or the High Commiſſion; for which he was not anſwerable. That the Deſign of buying in Impropriations, was a Project to undermine the Church: The twelve Men who were made the Truſtees in this Matter, took upon them, without any Authority, to diſpoſe of this Charity, (as it was called) to whom they ſaw fit; and beſtowed it only on Men diſaffected to the Church, to School-Maſters and Students of the Univerſity, to breed them up in Oppoſition to the Church; and diſpoſed of none of it to the preſent Incumbents, to whom the Tythes were due, unleſs they appeared to be of their factious Principles; and by theſe Means they would, in a ſhort Time, have brought great Part of the Clergy to depend on them: Whereupon, Mr. Attorney adviſing, that the Project was illegal, the Matter was tried and adjudged to be ſo in the Court of *Exchequer*; but that no Man had been more zealous for purchaſing Impropriations, than himſelf, where they might be applied to their proper Uſe.

18th *Day.*

His Grace being brought to the Bar again on the 17th of *June*, was charged with making a Diviſion between the Church of *England* and the foreign reformed Churches, by depriving the foreign Churches here, of their Priviledges; and that Paſſage in his Book againſt *Fiſher*, *(viz.) No Biſhop, no Church*, was urged as a further Proof of his Intention: A Paſſage in Biſhop *Montagu*'s Book alſo was cited againſt his Grace, *(viz.) That none but a Biſhop could ordain, unleſs in Caſe of Neceſſity:* And a third Thing inſiſted on was, his adviſing Biſhop *Hall*, not to affirm poſitively, That the Pope was Antichriſt: Another Offence was, his having aſſerted, *That Church Government by Biſhops* was not alterable by Human Laws.

Then the 13th Original Article, and the 7th Additional Article were proceeded on, which charge him with traiterouſly endeavouring to reconcile the Church of *England* to the Church of *Rome*; to maintain which, Dr. *Featley* depoſed, That about thirty Years ſince his Grace was reported to be Popiſhly affected at *Oxford*; and one *Harris* depoſed, that he was told, his Grace would leave the Church of *England:* And a Letter or two, found in his Grace's Study from the Pope to ſome other Perſons, were looked upon as a further Evidence of his Grace's being in a horrid Plot, to reconcile the Church of *England* to *Rome*; which was ſaid to be confirmed by his intimate Acquaintance with the Duke of *Buckingham*; by the Favour he was in with the Queen; and by Papers ſent him by one *Habernfield*, about a Plot; and laſtly, his having been offered a Cardinal's Cap.

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His Defence to the Charge of the 18th Day.

His Grace's Anſwer to this Part of the Charge was, That the Inference *No Biſhop, no Church*, was St. *Jerome*'s; and if they were offended at it, they would do well to anſwer him; that it was the Opinion alſo of many learned and moderate Divines, that none but a Biſhop could ordain, unleſs in caſe of Neceſſity; and whether the foreign Churches were under that Neceſſity, might deſerve Conſideration: That he did indeed adviſe Biſhop *Hall*, not to aſſert poſitively, the Pope was Antichriſt; and obſerved what King *James* ſaid, when he was reflected on for ſaying, the Pope was Antichriſt, *(viz.) I maintain it not as a Point of Faith, but as a probable Opinion; for which, I have more Grounds, than the Pope has for his Challenge of temporal Power over Princes: Let him recall this Opinion, and I will recall that*; adding, he did not believe the calling the Pope *Antichriſt* ever converted one underſtanding Papiſt: Nor had *Gabriel Powel* done the Church of *Englaud* much Service abroad, by affirming, *That he was as certain the Pope was Antichriſt, as that Jeſus Chriſt was the Son of God, and the Redeemer of the World:* However he ſaid, He left People to think as their Judgments guided them; as appeared by his licenſing Dr. *Featley*'s Sermons, where he endeavours to prove the Pope Antichriſt, and the Whore of *Babylon.*

To which *Nicholas* replied, in a Flood of abuſive Language, and concluded, That the Archbiſhop was a *Pander to the Whore of* Babylon. Whereupon his Grace ſaid, if they did not think fit to treat him as an Archbiſhop, he hoped he ſhould be uſed as a Chriſtian; and, were it not for the Duty he owed to God and his own Innocence, he would deſert his Defence, rather than endure ſuch Language: And the Lords were ſo good as to expreſs ſome Diſlike, at the abuſive Language that had been given him.

Then his Grace proceeded in his Defence, and ſaid, Though he had aſſerted the Government of the Church by Biſhops, was not alterable by Human Laws; yet he held, That Biſhops might be reſtrained and limited by Human Laws, in thoſe things which were but Incidents to their Calling; but their Calling, ſo far as it was by Divine Right, could not be taken away, which was the Judgment of the Church of *England*; as appeared by the Preface to the Book of Ordination, which ſays, *From the Apoſtles Time there have been three Orders of Miniſters in the Church of Chriſt, Biſhops, Prieſts, and Deacons*; and that this Book was confirmed by the Statute of the 8 *Eliz. cap.* 1. obſerving, That it was a little abſurd in them, to cry out of Innovations,

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tions, who had thrown Biſhops out of the Church, after they had continued in it ſixteen hundred Years.

As to *his being Popiſhly affected*, he obſerved, theſe were but Reports, and the Witneſſes had not inſtanced in one Popiſh Opinion held by him, except it was, his aſſerting the Neceſſity of Baptiſm, in the Divinity-School at *Oxford*. As to their inferring that he was Popiſhly affected, from ſome of the Pope's Letters found in his Study, and directed to other People, this was not at all concluding; for his Predeceſſor had many ſuch Letters by him, without any ſuch Imputation; nor did his Intimacy with the Duke of *Buckingham*, prove him to be for a Popiſh Match, either with *Spain* or *France*, or diſcover his Inclination to Popery, any more than her Majeſty's Favour.

As to *Habernfield*'s Plot, his Grace ſhewed, he ſent the Papers to the King, immediately after his receiving them: And by thoſe it appeared, There was a Conſpiracy againſt his own Life: He wondered therefore with what Colour they could produce thoſe Papers againſt him.

He did acknowledge, that a Perſon belonging to a certain Ambaſſador, did offer him a Cardinal's Hat, but he immediately acquainted his Majeſty with it; and they ought to have done him the Juſtice to have mentioned his Anſwer to the Offer, (*viz.*) *That ſomewhat dwelt in him, which would not ſuffer him to accept that, till* Rome *was altered*; But as to any other Offer by Signior *Con*, as his Enemies had ſuggeſted, he knew nothing of it; neither did he ſuffer *Con* to come near him, though great Application was made to him that he would: Concluding, That if the Offer of a Cardinal's Hat, would make a Man a Traitor, then any Papiſt might bring a Biſhop within the Danger of High Treaſon.

19th Day. On the 24th of *July*, the Managers went upon the ſame Articles they did at the preceding Hearing, and repeated a great deal of the ſame Matter: They charged him alſo with ſaying, *That the Church of* Rome *and ours, was all one; that we did not differ in Fundamentals, but in Circumſtances; that* Rome *was a true Church*, &c. That he favoured Papiſts and releaſed them out Priſon; entertained and harboured Sir *Toby Matthew*, and ſeveral Popiſh Prieſts, refuſed to commit *Fiſher* the Jeſuit; and was very intimate with Secretary *Windebank*, who uſed to diſmiſs Popiſh Prieſts, when the Meſſengers had taken them: That the Prieſts had the beſt Lodgings in *Newgate*, and the Liberty of walking the Streets: That he would not ſuffer Popiſh Books that were taken to be deſtroyed, but frequently returned them to the Owners; and that he had ſaid in the Preface to his Book againſt *Fiſher*, *That to his Remembrance, he had not given him or his, any coarſe Language.*

His Defence to the Charge of the 19th Day. His Grace anſwered, as to the Churches of *England* and *Rome* being all one, That his Words were, *Nor do the Church of* Rome *and the Proteſtants ſet up a different Religion, for the Chriſtiad Religion is the ſame in both*; and he obſerved, That unleſs they maintained Papiſts were no Chriſtians, they could make nothing of this Paſſage: And as to his ſaying, *We did not differ in Fundamentals*; *Calvin* himſelf had affirmed, *That in Deſpight of Antichriſt the Foundations of the Church remained in the Papacy itſelf, that the Church might not wholly periſh.*

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As to his being intimate with Mr. Secretary *Windebank*, he was an old Friend, and he thought him a Man of Worth, but, if he was deceived, the Secretary was living, and muſt anſwer for himſelf. He acknowledged he ſent four Pounds to releaſe *Fludd* out of Priſon; it having been repreſented to him, That he was a Convert from Popery, and his Impriſonment occaſioned on that Account; of which he produced a Witneſs: He alſo brought the Servants that attended him conſtantly, who depoſed, They never ſaw Sir *Toby Matthew* with his Grace, or any Popiſh Prieſt entertained by him: And as to *Fiſher* the Jeſuit, he did not think it proper to act in that Matter, leaſt it ſhould be ſaid, he deſtroyed himſelf becauſe he could not anſwer him.

As to Popiſh Books, he ſaid, it was the conſtant Courſe of the High Commiſſion to give them to their Regiſter, to lay up in his Office, and when they had a good Number of them, then to burn them; and if any were re-delivered to the Owners, it was, when they were not found Dangerous.

He thought it very hard they ſhould charge him with the Confinement or Liberty given to the Priſoners in *Newgate*; they did not ſure deſign to make the Archbiſhop Keeper of *Newgate*. And laſtly, as to his not calling Names and giving *Fiſher* and the Pope ill Language, when he wrote againſt them, he was ſtill of Opinion that ill Language added very little weight to an Argument,

His Grace being brought to the Bar again, the 29th of *July*, the Managers went upon 20th Day. the 14th Original Article, *(viz.) That to prevent his being queſtioned for theſe and other his Traiterous Proceedings, he had endeavoured to ſubvert the Rights of Parliament, and create a Diviſion between his Majeſty and his People, and ruin his Kingdoms; for which, they impeached him of High Treaſon.*

The Evidence, to ſupport this Charge was, That he had aſſiſted the Duke of *Buckingham* in making two Speeches, when he was impeached by the Houſe of Commons; and that he had drawn up two of the King's Speeches to the Parliament, in which were ſome four Paſſages; and Sir *Sackville Crowe* depoſed, that his Grace ſhewed him a Paper, in which were ſeveral Aſperſions on the Parliament, and that the Paper was ſubſcribed *W. Laud*: A Paſſage out of his Diary alſo was read, to ſhew his enmity to Parliaments (*viz*) *June* 15, 1626. *Poſt multas agitatione privata malitiam in Ducem Buckinghamiæ ſuperavit & ſuffocavit omnia publica negotia; nihil actum eſt, ſed Parliamentum ſolutum:* Wherein it was obſerved he charged the Parliament with Malice. Another Evidence of his Averſion to Parliaments, was ſaid to be, his aſſiſting in drawing up the Proclamation for

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ſuppreſſing the (Rebellious) Remonſtrance; a Paper alſo was produced, called his Grace's *Reaſons againſt Parliaments*, ſaid to be of his own Hand-writing: And the following Words were read out of his Diary againſt him, (*viz.*) *The Parliament which was diſſolved* 10 *March*, 1628, *ſought my Ruin*; as alſo ſome Notes on Sir *Benjamin Rudyard*'s Speech in Parliament.

Another Paſſage in his Diary was read, purely to expoſe him, (*viz.*) 27 *October*, 6 o. *Going into my upper Study to ſend away ſome Manuſcripts to* Oxford, *I found my Picture fallen down upon the Face, and lying on the Floor: I am almoſt every Day threatened with Ruin, God grant this be no Omen of it.* Another Paſſage half burnt out, which the Managers ſupplyed out of their own Invention, was read; wherein they make him ſay, that *Magna Charta had an obſcure Birth, and was foſtered by an ill Nurſe:* And concluded with part of a Dream, the Earl of *Pembroke* depoſed, that his Grace related to him, (*viz.*) *That he ſhould come to greater Preferment in the Church, and Power in the State, than any Man of his Birth and Calling, had done before; but in the End he ſhould be hanged.*

Whereupon, *Nicholas* the Manager ſaid, the firſt Part of his Dream had proved true, to the great Hurt both of Church and State; and he hoped their Lordſhips would now make good the latter, and hang him.

His Defence to the Charge of the 20th Day.

To the Charge of this Day his Grace anſwered, That there were no particular Faults found with the Speeches he made, or corrected, for the Duke of *Buckingham*; and it was not Criminal for one Friend to aſſiſt another: And as to the King's Speeches, he acknowledged he drew them, but he followed his Inſtructions cloſe, and could not imagine that ever this ſhould have been made a Foundation for a Charge of High-Treaſon.

He proteſted he never gave Sir *Sackville Crowe* any ſuch Paper as was mentioned, and the Truth of it was very much to be ſuſpected, in as much, as it was ſaid to be Signed *W. Laud*, and he was then Biſhop of St. *Davids*, and always ſubſcribed himſelf *Guil. Meneven* while he held that See: That the Teſtimony of *Bland* was Inconſiſtent; for he depoſed firſt, That the Propoſitions in that Paper, were the Occaſion of the Diſſolution of the Parliament; and within three Lines he ſays they were delivered to the Duke of *Buckingham* after the Parliament was diſſolved ----That the Words *privata malitia* in his Diary, could not relate to the Parliament, but to ſome private Men in that Parliament: And as to the Paper called, *Reaſons againſt Parliaments:* It appeared to contain ſome Hopes and Fears, which were conceived of a Parliament, and not Reaſons againſt them. That his Grace was not the Author of thoſe Hopes and Fears, but only gave his Advice as a Privy Counſellor, when it was demanded; and this was his Duty: However, thoſe Hopes and Fears related but to the ſucceeding Parliament and their hopes prevailing the Parliament ſat. -----As to the Note in his Diary, That a certain Parliament ſought his Ruin, this was a much better Argument to prove the Parliament Enemies to him, than

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he to them: And he thought his diſliking a Paſſage in Sir *Benjamin Rudyard*'s Speech, would never prove him an Enemy to Parliaments: That as to his drawing the Proclamation, containing an Anſwer to the Remonſtrance, he did it by Command, and agreeable to his Inſtructions; and what the Remonſtrance tended to, all the World were convinced by this Time: That there was no Proof of that Paſſage *that Magna Charta had an obſcure Birth*, and indeed the Expreſſion was not to be found in ſeveral Law Books. -----As to his pretended Dream, though the Earl of *Pembroke* had avered the Truth of it upon his Honour, he never had any ſuch Dream: He ſaid he had not forgotten the Prediction of our Saviour, *That in the World we ſhould be ſure to meet with Affliction.* Nor his Prayer *Father forgive them, for they know not what they do:* And concluded his Defence with a Prayer, *That God would bleſs both King and People, ſubmitting himſelf to his Divine Will.*

Then his Grace moved, that a Day might be aſſigned him to make a Recapitulation of the whole Proceedings, and that his Council might ſpeak to the Points of Law, which was granted, after their Lordſhips had conſulted the Commons; and *Monday* the 2d of *September* was appointed for the Recapitulation.

His Grace's Recapitulation.

His Grace, appearing at the Bar the 2d of *September*, ſaw, that every Lord had a ſmall Folio in his Hand, which he found to be his Diary in print, with *Prynne*'s Remarks upon it: Before he entered on his Recapitulation, he obſerved, That his Trial began the 12th of *March* 1643-4, and ended the 29th of *July* following; during which Time their Lordſhips had heard him twenty Days, and twelve Days they had ſent him back without hearing; and the Intervals had been taken up, in finding and managing the Evidence againſt him. He deſired their Lordſhips would conſider his Function, his great Age, his long Impriſonment, the Loſs of his Eſtate, and the Reſignation with which he had borne theſe Afflictions: That they would alſo obſerve the Generality and Uncertainty of every Article, which made his Defence extremely Difficult: That the uſe of his Study, his Books and Papers had been taken from him, and of twenty three Parcels of Papers prepared for his Defence, and taken from him in the *Tower*, by Mr. *Prynne*, but three were returned again: That his very Pockets were ſearched, and even his Diary and Prayer-Book taken from him; and made uſe of, not to prove, but to Frame a Charge againſt him. But thus far theſe Hardſhips had been an Advantage to him; that their Lordſhips by his Diary had ſeen the Paſſages of his Life; and by his Prayer-Book, the greateſt Secrets between God and his Soul: And though theſe had been thoroughly ſearched, he thanked God, they could find no Diſloyalty in the one, or Popery in the other: That all the Council Books, thoſe of the Star-Chamber, High-Commiſſion, Signet-Office, Regiſter's of *Oxford* and *Cambridge*, had all been diligently ſearched for matter againſt him; yet he was ſuffered to have no Aſſiſtance from any of them, towards making his Defence.

That

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That even his Actions, that tended to the publick Good, and the Honour of the Church and Kingdom, and in which he had been at great Pains and Expences, ſuch as the Repairing St. *Paul's*, and ſettling the Statutes of the Univerſity of *Oxford*, had been objected to him as Crimes: That moſt of the Witneſſes produced againſt him, had been exaſperated Sectaries, or Separatiſts, whom the Laws had been put in Execution againſt: But by the Civil Law, no Schiſmatick was to be admitted a Witneſs againſt his Biſhop: That theſe Men were made Witneſſes in their own Cauſes; and the Judgments of the Star Chamber, High Commiſſion and Council Table, were here on a ſudden overthrown, by the Teſtimony of the Parties themſelves; nor was it poſſible for one, who had ſat as Judge in ſo many ſeveral Cauſes, to give an Account of the reſpective Motives that directed his Conſcience in every one of them, after ſo many Years elapſed: That what he had done was, to the beſt of his Underſtanding, conducive to the Peace and Welfare of the Kingdom, and the Maintenance of the Doctrines and Diſcipline of the Church Eſtabliſhed by Law: And obſerved, that, while he was in the Adminiſtration, God had been pleaſed to bleſs this State with ſuch Peace and Plenty, that the Neighbouring Nations looked on us with Admiration. What the Overthrow of this Conſtitution might produce, God only knew; but he prayed God to avert it.

He obſerved alſo, That every haſty Expreſſion, to which he had been urged by any Provocation, had been inſiſted on, to aggravate the Charge; but he hoped their Lordſhips would impute them to human Frailty: That he was in many Inſtances criminally charged with the Actions of other Men, and even with the Acts of the Star Chamber, Council Table, High Commiſſion and Convocation, where he had but a ſingle Vote; and in ſome of theſe Courts there ſat with him Men of the greateſt Honour, Learning and Experience; and it was hard, that the ſame Facts ſhould be conſtrued Treaſon in him, which were not cenſured as Miſdemeanors in any of the reſt. ----- That there had been no Proof of his ſoliciting any Man to concur with him, nor could his Vote influence others, becauſe it was always given laſt.

That as to what had been ſo ſtrenuouſly urged againſt him, That he aſcribed that Power to the Church which belonged to the Parliament; he conceived, the Parliament could not as the Law ſtood, determine the Truth of Doctrines, without the Aſſent of the Church in Convocation; that the firſt Clauſe in *Magna Charta*, eſtabliſhes the Church in all her Rights, of which, *the Power of Determining in Matters of Doctrine, and Diſcipline was one, at that Time*; nor had this Right of the Clergy been limited by any Law ſince, but by that Clauſe of 1 *Eliz. cap.* 1. which empowers the Parliament *with the Aſſent of the Convocation*, to judge of Hereſy, *&c.* and ſtill he held, that the judging of the Truth or Falſhood of any Doctrine was in the Church; though the Power of puniſhing Offenders was in the Parliament with the Aſſent of the Clergy.

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That it was true the King and Parliament might, by their abſolute Power, change Chriſtianity into Mahometiſm; and thoſe who could not obey, muſt either fly, or endure the Penalties inflicted for their Diſobedience; but both King and Parliament, muſt Anſwer for the abuſe of their Power to God: And though it had been objected, that if the Parliament would not have meddled with Religion without the Convocation, there had been no Reformation: Yet the Articles of Religion were ſettled by a Synod of the Clergy, at the Reformation; and confirmed by Parliament, with the Aſſent of the Clergy, in Convocation.

And whereas, his Accuſers had not been able to charge any one of his Actions as Treaſonable; and yet had notwithſtanding, urged that the *Reſult* of them all together amounted to Treaſon. He begged leave to obſerve, that the *Reſult* muſt be of the ſame Nature and Species with the Particulars, from which it ariſes: And as this Rule held in Nature and Morality, ſo it did in Law; for where there were never ſo many Crimes heaped together, yet there was no Law that made the Reſult of different Crimes, Treaſon, where none of the Particulars were Treaſon by Law: That the Statute of the 25 *Edw.* III. had determined what ſhould be deemed Treaſon, and what not; and unleſs this Reſult was ſomething within that Statute, it could not be Treaſon: *But I refer to the preceeding Trial for the reſt of the Arguments, in his Grace's Speech, as well as the Arguments of Mr.* Brown *the Manager, who replyed to his Recapitulation; there being ſcarce any thing in either, but what was inſiſted on more at large, in the ſeveral Hearings already recited.*

His Grace afterwards moved, that his Counſel might be heard to the following Points, (*viz.*) whether all, or any of the Articles amounted to High-Treaſon: Secondly, whether the Charge contained in them, was made with that Certainty the Law required: But theſe Points being communicated to the Commons, they would not ſuffer the Counſel to argue any more than the firſt; with whom their Lordſhips (now in a Manner ſubject to the Commons) agreed; and Mr. *Hern*, was pitched upon, to deliver his own, and the Arguments of the reſt of his Grace's Counſel, at the Bar of the Houſe, the 11th of *October*. Wherein, beſides what his Grace had already inſiſted on, they obſerve, that as nothing is Treaſon by the Law of *England*, but what is made ſo by the 25 *Edw.* III. ſo that Act ought not to be conſtrued by Equity or Inference: 1. Becauſe it is a Declarative Law, and no Declaration ought to be ſurcharged with another Declaration. 2. This Law was provided for a Security in Life, Liberty, and Eſtate: But to admit Conſtructions and Inferences upon it, muſt by Conſequence deſtroy the Intent and Force of the Proviſion. 3. It has been held in Parliament and judicial Debates, that this Act ſhall be literally conſtrued, and not ſtretched to Inferences.

The Arguments of his Grace's Counſel, as to Points of Law.

Then they proceed to ſhew, that no Part of the Charge contains any of the Treaſons declared by the 25 *Edw.* III. or any ſubſequent Statute: That an *endeavour* to ſubvert the

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ſuppreſſing the (Rebellious) Remonſtrance; a Paper alſo was produced, called his Grace's *Reaſons againſt Parliaments*, ſaid to be of his own Hand-writing: And the following Words were read out of his Diary againſt him, (*viz.*) *The Parliament which was diſſolved* 10 *March*, 1628, *ſought my Ruin*; as alſo ſome Notes on Sir *Benjamin Rudyard*'s Speech in Parliament.

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That

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That even his Actions, that tended to the publick Good, and the Honour of the Church and Kingdom, and in which he had been at great Pains and Expences, ſuch as the Repairing St. *Paul*'s, and ſettling the Statutes of the Univerſity of *Oxford*, had been objected to him as Crimes: That moſt of the Witneſſes produced againſt him, had been exaſperated Sectaries, or Separatiſts, whom the Laws had been put in Execution againſt: But by the Civil Law, no Schiſmatick was to be admitted a Witneſs againſt his Biſhop: That theſe Men were made Witneſſes in their own Cauſes; and the Judgments of the Star Chamber, High Commiſſion and Council Table, were here on a ſudden overthrown, by the Teſtimony of the Parties themſelves; nor was it poſſible for one, who had ſat as Judge in ſo many ſeveral Cauſes, to give an Account of the reſpective Motives that directed his Conſcience in every one of them, after ſo many Years elapſed: That what he had done was, to the beſt of his Underſtanding, conducive to the Peace and Welfare of the Kingdom, and the Maintenance of the Doctrines and Diſcipline of the Church Eſtabliſhed by Law: And obſerved, that, while he was in the Adminiſtration, God had been pleaſed to bleſs this State with ſuch Peace and Plenty, that the Neighbouring Nations looked on us with Admiration. What the Overthrow of this Conſtitution might produce, God only knew; but he prayed God to avert it.

He obſerved alſo, That every haſty Expreſſion, to which he had been urged by any Provocation, had been inſiſted on, to aggravate the Charge; but he hoped their Lordſhips would impute them to human Frailty: That he was in many Inſtances criminally charged with the Actions of other Men, and even with the Acts of the Star Chamber, Council Table, High Commiſſion and Convocation, where he had but a ſingle Vote; and in ſome of theſe Courts there ſat with him Men of the greateſt Honour, Learning and Experience; and it was hard, that the ſame Facts ſhould be conſtrued Treaſon in him, which were not cenſured as Miſdemeanors in any of the reſt. ----- That there had been no Proof of his ſoliciting any Man to concur with him, nor could his Vote influence others, becauſe it was always given laſt.

That as to what had been ſo ſtrenuouſly urged againſt him, That he aſcribed that Power to the Church which belonged to the Parliament; he conceived, the Parliament could not as the Law ſtood, determine the Truth of Doctrines, without the Aſſent of the Church in Convocation; that the firſt Clauſe in *Magna Charta*, eſtabliſhes the Church in all her Rights, of which, *the Power of Determining in Matters of Doctrine, and Diſcipline was one, at that Time*; nor had this Right of the Clergy been limited by any Law ſince, but by that Clauſe of 1 *Eliz. cap.* 1. which empowers the Parliament *with the Aſſent of the Convocation*, to judge of Hereſy, *&c.* and ſtill he held, that the judging of the Truth or Falſhood of any Doctrine was in the Church; though the Power of puniſhing Offenders was in the Parliament with the Aſſent of the Clergy.

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That it was true the King and Parliament might, by their abſolute Power, change Chriſtianity into Mahometiſm; and thoſe who could not obey, muſt either fly, or endure the Penalties inflicted for their Diſobedience; but both King and Parliament, muſt Anſwer for the abuſe of their Power to God: And though it had been objected, that if the Parliament would not have meddled with Religion without the Convocation, there had been no Reformation: Yet the Articles of Religion were ſettled by a Synod of the Clergy, at the Reformation; and confirmed by Parliament, with the Aſſent of the Clergy, in Convocation.

And whereas, his Accuſers had not been able to charge any one of his Actions as Treaſonable; and yet had notwithſtanding, urged that the *Reſult* of them all together amounted to Treaſon. He begged leave to obſerve, that the *Reſult* muſt be of the ſame Nature and Species with the Particulars, from which it ariſes: And as this Rule held in Nature and Morality, ſo it did in Law; for where there were never ſo many Crimes heaped together, yet there was no Law that made the Reſult of different Crimes, Treaſon, where none of the Particulars were Treaſon by Law: That the Statute of the 25 *Edw.* III. had determined what ſhould be deemed Treaſon, and what not; and unleſs this Reſult was ſomething within that Statute, it could not be Treaſon: *But I refer to the preceeding Trial for the reſt of the Arguments, in his Grace's Speech, as well as the Arguments of Mr.* Brown *the Manager, who replyed to his Recapitulation; there being ſcarce any thing in either, but what was inſiſted on more at large, in the ſeveral Hearings already recited.*

His Grace afterwards moved, that his Counſel might be heard to the following Points, (*viz.*) whether all, or any of the Articles amounted to High-Treaſon: Secondly, whether the Charge contained in them, was made with that Certainty the Law required: But theſe Points being communicated to the Commons, they would not ſuffer the Counſel to argue any more than the firſt; with whom their Lordſhips (now in a Manner ſubject to the Commons) agreed; and Mr. *Hern*, was pitched upon, to deliver his own, and the Arguments of the reſt of his Grace's Counſel, at the Bar of the Houſe, the 11th of *October*. Wherein, beſides what his Grace had already inſiſted on, they obſerve, that as nothing is Treaſon by the Law of *England*, but what is made ſo by the 25 *Edw.* III. ſo that Act ought not to be conſtrued by Equity or Inference: 1. Becauſe it is a Declarative Law, and no Declaration ought to be ſurcharged with another Declaration. 2. This Law was provided for a Security in Life, Liberty, and Eſtate: But to admit Conſtructions and Inferences upon it, muſt by Conſequence deſtroy the Intent and Force of the Proviſion. 3. It has been held in Parliament and judicial Debates, that this Act ſhall be literally conſtrued, and not ſtretched to Inferences.

The Arguments of his Grace's Counſel, as to Points of Law.

Then they proceed to ſhew, that no Part of the Charge contains any of the Treaſons declared by the 25 *Edw.* III. or any ſubſequent Statute: That an *endeavour* to ſubvert the

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the Fundamental Laws is not Treaſon by any Law. 1. Becauſe it is not comprized within any of the Words of the 25 *Edw.* III. nor can be brought within it, by any Conſtruction or Inference. 2. Becauſe an *endeavour* to ſubvert Laws, is of ſo great a Latitude and Uncertainty, that every Action not warrranted by Law, might by this means be ſtrained to Treaſon; and to corroborate their Argument, cited the following Caſe out of Sir *Edw. Coke*, (*viz.*) 'A Conveyance was 'made in Tail, with a Proviſo, that if the 'Tenant did *go about* or *attempt*, to diſ-'continue the Entail, the ſame ſhould be 'void; and it was reſolved by the Judges, 'that the Proviſo was void, becauſe the 'Words *attempt*, or *go about*, are uncertain 'Terms: 'And the Reporter adds, *God defend that Inheritances and Eſtates of Men ſhould depend upon ſuch uncertainties. Miſera eſt ſervitus, ubi jus eſt vagum, & quod non definitur in jure quid ſit Conatus.* And therefore the Rule of Law decides this Point; *Non efficit conatus niſi ſequitur effectus*, the Law rejects *conations* and *goings about*, as things uncertain, that cannot be put in Iſſue: And his Grace's Counſel urged, that if Eſtates were thus well guarded, it was preſumed this Reaſoning would hold much ſtronger in Caſes of Life.

Then they ſingled out two Particulars, that ſeemed to have been urged with the greateſt Force againſt the Archbiſhop.

1. *That he had traiterouſly endeavoured to reconcile the Church of* England *to the Church of* Rome. But if this was Treaſon, they obſerved it muſt be ſo by the 5th *Jac. cap.* 4. which enacts, *That if any Man ſhall put in Practice, to reconcile any of his Majeſty's Subjects to the Pope or See of* Rome, *he ſhall incur the Forfeitures of Treaſon.* But firſt, the Article only charges an *Endeavour*, whereas the Statute mentions a *putting in Practice.* Secondly, the Article charges an Endeavour of Reconciling the *Church* of *England* with the Church of *Rome*; whereas the Statute mentions the reconciling *His Majeſty's Subjects* with the See of *Rome.*

The other Particular is in the 7th Additional Article; in which, the Archbiſhop is charged, with wittingly and willingly receiving and harbouring divers Popiſh Prieſts and Jeſuits, and particularly, *Sancta Clara* and Monſ. St. *Giles:* But they obſerved, that the harbouring Prieſts and Jeſuits was *Felony*, and not *Treaſon*; and that the Statute extends only to Prieſts born within the *Engliſh* Dominions, which *Sancta Clara* and St. *Giles* were not.

They urged alſo ſeveral things which his Grace had inſiſted on before; and in the whole Argument confined themſelves to the Nature and Degree of the Crimes exhibited in the Articles, without touching on Matter of Fact, or enquiring whether the Particulars of the Charge were proved or not.

A Petition for executing Delinquents.

The Hearing being over, a Petition was handed about *London*, for bringing Delinquents to Juſtice; and ſeveral Preachers did all that lay in their Power to inflame the People; telling them, that nothing could conduce more to the Glory of God, than the Execution of Delinquents: And by theſe Means, a Multitude of Hands were procured to the Petition, which was delivered to the Commons the 28th of *October*, none being named in it but the Archbiſhop, and the Biſhop of *Ely.*

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The Lords ſhew no Inclination to convict his Grace.

And now the Commons finding that the Lords would not do their Buſineſs, and convict the Archbiſhop of High-Treaſon, reſolved to deſtroy him by a Bill of Attainder, which they were ſo gracious to acquaint the Archbiſhop with, and ordered him to be brought to their Bar the firſt of *November*; where Mr. *Brown*, one of their Managers, gave them a Summary of the Proceedings, before the Houſe of Lords, and his Grace was permitted to anſwer it, the 11th of the ſame Month; wherein he obſerved, that, though Mr. *Brown* was a very able Man, and had with a great deal of Art ſummed up the Evidence, yet the Commons had not heard the Witneſſes themſelves, as the Lords had done; and that what had been repreſented to them, was but the Collection of one Man's Judgment, who related what he *conceived* had been proved: But his Opinion poſſibly might differ widely from the Opinion of the Judges themſelves, who heard the Evidence at large: And beſides, Mr. *Brown* had been abſent ſeveral Days, when his Grace was heard; and of thoſe Days, he could only *report* what had been *reported* to him: And he thought, never any Jurors, who were Tryers of Facts, either in Criminal or Civil Caſes, founded their Verdict upon Evidence only *reported* to them, which they did not hear themſelves: He offered it to their Conſideration alſo, Whether it were juſt and honourable, to judge him in that Houſe, when he had been impeached by them, and pleaded, and Iſſue joined, and Evidence given in upon Oath, in another Place: Whether, after this, they would think fit to judge him in their own Houſe, only upon a *Report* or *Hear-ſay*, without any Oath made before them:

He is heard at the Bar of the Houſe of Commons.

On the 14th of *November*, his Grace was brought to the Bar of the Houſe of Commons again, to hear Mr. *Brown*'s Reply, but was not ſuffered to ſpeak afterwards; and within two Days they paſſed the Ordinance, or Bill of Attainder, and ſent it up to the Lords; who were ſtill of Opinion, That the Facts his Grace was charged with, did not amount to High-Treaſon: But the Commons ſending them a Meſſage, *That they would do well to paſs the Ordinance, or the Multitude would come down and force them to it*; and giving them to underſtand alſo, that they would be ſoon voted uſeleſs, if they did not comply; a ſmall Remnant of the Lords (not above fourteen, at moſt, preſent in the Houſe) paſſed the Ordinance for the Archbiſhop's Attainder, on the 4th of *January*; and on the 6th, an Order of both Houſes, was made for his Execution on the 10th of the ſame Month. Some Hiſtorians relate there were only ſeven Lords preſent at the paſſing the Bill of Attainder, and give us the Names of

An Ordinance, or Bill of Attainder, paſſes the Commons.

They threaten the Lords, to make them paſs the Ordinance.

But ſeven preſent at the paſſing the Ordinance.

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of six of them, *(viz.)* the Earls of *Kent*, *Pembroke*, *Salisbury*, and *Bolingbroke*, the Lord *North*, and the Lord *Grey* of *Werk*.

Their Names.

The A. Bp. pleads the King's Pardon;

The Archbishop afterwards acquainted the Houses, that he had his Majesty's Pardon; but this would not avail him. First, because it was granted before Conviction, they said; and secondly, that if it had been subsequent, yet in a Case of Treason, against the Kingdom, (as they termed it) it could be of no Force. However, they indulged his Grace so far, as to remit all the rest of the Sentence, but the Beheading.

but it is disallowed.

His Behaviour at his Execution.

This Heroick Confessor being brought to the Scaffold on *Tower-Hill* the 10th of *January*, mounted it with an Air of great Resolution and Chearfulness, beginning his Speech with the following Text of Scripture, *(viz.) Let us run with Patience the Race that is set before us, looking unto Jesus*, &c. And among other Things he said, That he was well assured, God was able to deliver him from this Violence, as he did the three Children from the Furnace; and that by our Saviour's Assistance, his Resolution was the same with theirs: They refused to worship the Image the King had set up; neither would he idolize the Imaginations of the People, nor forsake the Temple and Truth of God, to follow the Bleating of *Jeroboam*'s Calves. As for the People he observed, they were miserably misled; the Blind led the Blind, and if they went on, they would both certainly fall into the Ditch. Then he observed, that he was not only the first Archbishop, but the first Man, that ever died by an Ordinance of Parliament; and hoped his Cause would appear in Heaven, with a different Complection from what was put upon it here: That his Case, as foul as it was represented, looked something like that of St. *Paul*'s, who was accused as a great Criminal against the Law and the Temple; and St. *Stephen*'s, who was arraigned for breaking the Ordinances that *Moses* had delivered; that is, for *endeavouring* the Subversion of the Laws and Religion of his Country.

Then he proceeded to clear the King of being Popishly affected; a Calumny, which he said he knew him to be as free from, as any Man living; for he held him to be as sound a Protestant, (according to the Religion by Law established) as any Man in the Kingdom; and that he would venture his Life as far and as freely for it. He complained of the riotous Tumults of the People, and their clamouring for Justice at the Parliament House: This was the way he said, to draw the Guilt of Blood upon their Heads; and these mutinous Disorders he observed, were not restrained by the Magistracy. He lamented the calamitous Condition of the Church of *England:* She was become, he said like an Oak, cleft in Pieces with Wedges made of her own Body, while Iniquity and Prophaneness triumphed under the Pretence of Godliness: That the Substance of Religion was lost; and that Church, which stood firm against the Attacks of the Jesuits, was terribly battered by her own Party.

As to his Religion, he declared himself of the Communion of the Church of *England* established by Law; and in this Persuasion, he said, he had always lived, notwithstanding the unreasonable Clamours raised against him. He declared himself also a Friend to the Constitution, and particularly to Parliaments; but the best Things, he observed, were often corrupted, and became the worst: Thus the Parliament being the highest Court, the last Resort, from which there was no Appeal, when this last Resort was misinformed or misgoverned, it turned to be the most fatal Grievance; for in such Cases the Subject was left without Remedy.

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After this Speech, the Archbishop performed his Devotions with great Fervency, and then moving towards the Block, found the Scaffold so crowded with his Enemies that came to triumph, that he was forced to entreat them to make Way, and give him Room to die: But Sir *John Clotworthy*, who endeavoured to give him all the Disturbance he could in his last Moments, still stood in his Way, and demanded, What Text of Scripture was most comfortable to a dying Man: To which his Grace answered, *Cupio dissolvi, & esse cum Christo:* But Sir *John* replied, there must be an *Assurance* to found that Desire upon: And Sir *John* continuing this barbarous Treatment, the Archbishop could find no other way to get rid of the impertinent Zealot, than by bidding the Executioner do his Office, who separated his Head from his Body at one Blow.

His Character.

A late Ecclesiastical Writer says, He was of a lively and penetrating Genius; of a sociable Temper, and innocently pleasant upon Occasion: And if we consider his Function, he had passed through almost all the Employments of a Churchman; and how much he was a Master of his Profession, is sufficiently evident from his Book against *Fisher*. He was a Person of unblemished Integrity: Money had no Share in his Inclination; for, notwithstanding the Largeness of his Revenues, his Fortune was almost exhausted, in his Benefactions to *Oxford*, *Reading*, St. *Pauls*, &c. His Piety was no less exemplary and distinguished: He was constant at his Chapel, and private Devotions: His warm Loyalty, and Zeal for Uniformity, brought him to this tragical End. The Earl of *Clarendon* observes, that he was somewhat Passionate; that he failed in a plausible Application; neglected Address, and believed bare Honesty, and a vigorous Pursuit, sufficient to carry him through. However the Noble Historian says, he was eminent for his Learning and Piety; that he behaved himself with great Courage and Magnanimity upon the Scaffold: That his good Qualities were attained by very few, and the greatest of his Infirmities common to the best of Men. He was put to Death in the 72d Year of his Age. He was a great Benefactor to the Church; annexed Commendams to several small Bishopricks, particularly to *Bristol*, *Peterborough*, St. *Asaph*, *Chester*, and *Oxford*. He procured a Charter, to confirm the ancient Privileges of the University of *Oxford*, and enlarge them to an equal Extent, with those granted to *Cambridge*. He settled two hundred Pounds *per Annum* upon an Hospital at *Reading* in *Berkshire*.

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ſhire. (*His Father was a Clothier, of good Subſtance in this Town, and here he was born.*) He founded the *Arabick* Lecture at *Oxford*; procured a new Charter, and a Body of Statutes, for the College of *Dublin*. He was endeavouring to provide a Fund for the Augmentation of poor Vicarages, and for ſettling the Tythes of *London* between the Clergy and City; and indeed his principal Views were, the rendering the Church of *England*, the Monarchy, and the Kingdom happy and flouriſhing; which were the real Crimes for which he was made a Sacrifice: Neither the Fanatick or Republican could be ſatisfied, till they had ſpilled the Blood of a Prelate, that had ſo nobly oppoſed their Schemes. He was buried in *Barking* Church near the *Tower*, with the Office appointed by the Liturgy: And it is ſomething extraordinary, that the ſame Day the Lords agreed to the Archbiſhop's Attainder, they paſſed an Ordinance, That the Book of Common-Prayer ſhould be laid aſide, and the Directory uſed inſtead of it; and his Grace is ſaid to be the laſt Man, that was buried according to the Rites of the Church of *England*, in *London*, during thoſe Times.

Remarks on Archbiſhop Laud's Trial.

It is manifeſt, the Star-Chamber, the High-Commiſſion, the Convocation, and Council-Table, were all tried and cenſured, by this corrupt Remnant of a Parliament, and included in the Sentence or Attainder, that paſſed on the Archbiſhop; for he was condemned for voting in the Proceedings of all theſe High Courts, and for the Decrees *they* made.

The Sum of the Charge againſt his Grace was, *That he had endeavoured the Subverſion of our Religion, and Civil Government.* But by Religion, it is evident they meant the Presbyterian; and by Government, they meant the Republican Form.

For as to Religion, they charge him with affirming, That without a Biſhop there could be no Church; and that only Biſhops could Ordain, unleſs in Caſes of Neceſſity. They accuſed him alſo of maintaining Arminianiſm; by which they meant the Freedom of the human Mind, or, that Man is a free Agent, (and not under a fatal Neceſſity of being damned.) Theſe Points were held to be down-right Popery, by the Puritans of thoſe Days; though they are generally looked upon as orthodox Opinions, by our Church. They cavilled alſo with him about leſſer Matters; ſuch as placing the Communion Table North and South; the kneeling at the Sacrament; the Conſecration of Churches, and ſacred Utenſils, and endeavouring to guard them from Prophanation; and even his repairing the Cathedral of St. *Paul*'s, was made Part of an Impeachment for High Treaſon.

Then as to the State, his advancing the Prerogative and Power of the Star-Chamber, High-Commiſſion, Council-Table, and the Convocation, were the Treaſons chiefly inſiſted on; which Part of the Charge was fully anſwered, by ſhewing that thoſe Courts acted more Arbitrarily in the preceding Reigns than in this; and if they did not, he was not anſwerable for their Determinations: But it is evident, from the whole Tenor of the Trial, that they intended to place the laſt Reſort, in one or both Houſes of Parliament; and to eſtabliſh it for a Maxim, That not only thoſe Courts, but his Majeſty and his Miniſters were ſubject to their Reſolutions; and that a Vote of the Houſes might abrogate, or ſuſpend our Laws; and that they uſurped a more unlimited Power themſelves, than ever the Crown or Miniſtry, were charged with aſſuming: And if this were not demonſtrable from this Trial, their ſubſequent Conduct abundantly manifeſted, that the Religion they were afraid, ſhould be ſubverted, was the Presbyterian, not the Eſtabliſhed Church; and the Government they charged him with conſpiring againſt, was the Republican Form, which they were reſolved to maintain, to the Deſtruction of the Monarchy.

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It is acknowledged however, that, at firſt, the Members of both Houſes were generally of the eſtabliſhed Church, even in the Parliament of 1641, that deſtroyed both Monarchy and Epiſcopacy: Nor had the greateſt Part of them any thoughts of altering the Conſtitution. But it has been obſerved by the Lord *Clarendon* and others, that, beſides the profeſſed Presbyterians and Republicans, there were a great many others who out of Ambition, Avarice, or Revenge, joined themſelves with that Party, and were inſenſibly led into their Meaſures; till at length there was no Retreating; They had been drawn into down-right Rebellion, and were glad to Unite themſelves afterwards with any ſett of Men, that might prevent the Return of their Sovereign to his Throne: Or the Reſtoration of thoſe Laws, that would puniſh their Diſloyalty.

The Hardſhips the Archbiſhop underwent in this Proceeding was one continued Act of Tyranny, Injuſtice and Oppreſſion, of which I ſhall give ſome Inſtances.

And firſt, he was Impeached and Committed to the Black Rod, above two Months before any Articles were exhibited againſt him; then he was kept, between two and three Years more, a cloſe Priſoner in the Tower, before he was brought to his Trial: All his Eſtate Real and Perſonal; Books and Papers, were ſeized, on his Commitment; his very Pockets ſearched, and the Writings he had prepared for his Defence taken from him; by what Law, or Colour of Law, God only knows.

When he was firſt carried to the *Tower*, the Mob was ſpirited up to revile and reproach him; they were even taught, that it would be meritorious to kill him, and only reſtrained from pulling him to Pieces, that his Suffering might be prolonged, and they might in a more Solemn Manner, ſatiate their Thirſt of Blood.

Every Day, when he landed at *Weſtminſter*, ſome of the Faction ſtood ready to curſe, and revile him; the Managers of the Commons, ſpoke to him, and off him, as the moſt infamous Malefactor; and his Judges treated him with the utmoſt Scorn. One of

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of the Noble Peers, who ſat in Judgment upon him, namely, the Earl of *Pembroke*, deſcended ſo low as to call the greateſt Subject in *England*, *Raſcal*, and *Villain*. He was brought to *Weſtminſter*, Twelve ſeveral Days, only to be expoſed to the Scorn and Laughter of his Enemies, and ſent back again without being heard; though they put him to the Expence of Seven or Eight Pounds a Day; but it muſt be acknowledged, they were ſo good as to allow him Two Hundred Pounds, out of the Profits of his own Eſtate, after they had Sequeſtred it for three Years; the reſt was applyed to the Support of the Rebellion, againſt their Sovereign, as was the Money his Grace had collected for the Repairs of St. *Paul's*: And when the Peers could find no Treaſon in the Archbiſhop, unleſs Loyalty to his Prince was deemed ſuch, how Arbitrarily did the Commons ſend for his Grace before them, and of Accuſers become his Judges; paſſing an Ordinance for his Condemnation; which they forced through the little Remnant of the Lords Houſe, by their Mobs and Threats to lock up their Doors! And when the Ordinance was paſſed, and they had rejected the King's Pardon, which he pleaded; how cruelly, did they deny him his own Chaplains to attend him, in his laſt Moments! And Laſtly, when he came to the Scaffold, how did their Malice purſue him thither; *Clotworthy*, and the reſt, perſecuting him even there, and not ſuffering him to Die in Quiet!

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The Trial of CONNOR Lord MACGUIRE, in the Court of *King's Bench*, (as the Uſurpers ſtill called it,) for *High Treaſon*, the 10th, of *Feb.* 1644-5. 20 *Car.* I.

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Lord Macguire's Trial.

Arraigned as a Commoner.

CONNOR Lord MACGUIRE, a Peer of *Ireland*, was arraigned at the *King's Bench* Bar in *England*, as a Commoner, for High Treaſon committed in *Ireland*.

The Charge.

The Indictment charges the Priſoner with Compaſſing and Imagining the Death of the King, Conſpiring to raiſe a Rebellion, and inviting over foreign Forces to invade the Realm of *Ireland*, and particularly, with a Deſign of ſeizing the Caſtle of *Dublin*, and other Forts and Magazines in that Kingdom. It Charges him alſo, with Levying open War againſt his Majeſty; ſurprizing the Caſtles of *Charlemont*, *Cragan*, &c. and murdering the Lord *Calfield*, and other Proteſtants in *Ireland*.

Plea of Peerage.

The Priſoner pleaded his Peerage; ſhewing, that by the Statute of *Magna Charta*, every one ought to be tried by his Peers, and that by the 10 *Hen.* VII. the Statutes of *England* were made Part of the Laws of *Ireland*.

Over-ruled.

The Council for the Parliament, demurring to this Plea, Mr. Juſtice *Bacon* over-ruled it; declaring that a Baron of *Ireland* was triable by a Jury of Commoners in *England*; and of this Opinion it ſeems were both Houſes of that Parliament: Whereupon, the Priſoner pleaded *Not Guilty*, and deſired time to bring his Witneſſes from *Ireland*; but this was denied him: Then the Jury were called over, and he challenged Twenty-three peremptorily, which were all that appeared but one: Whereupon

His Challenges.

a *Tales* was granted, and he was brought to the Bar again the next Day by the Lieutenant of the *Tower*, when he challenged as many of the *Tales* as, with thoſe challenged before, amounted to thirty-five; and at length, a Jury being ſworn, the Council for the Parliament produced their Evidence.

A Tales awarded for want of Jurors.

The Evidence.

And Firſt, they brought Witneſſes that depoſed, the Priſoner was a Papiſt, and was very inquiſitive about the Condition of the Magazines of Arms and Ammunition in *Dublin*.

A Depoſition read as Evidence.

Then the Depoſition of *John Woodcook* the Sheriff of *Dublin* was read, who depoſed, that he apprehended the Lord *Macguire* and ſeveral of his Accomplices at *Dublin*, on the Twenty ſecond of *October* 1641, (being the Day before the Inſurrection of the Papiſts in *Ireland*.) That it was then late at Night, and the Priſoners had Arms about them, and ſeveral Petards for breaking open Doors; and that he carried them before the Lords Juſtices.

The Priſoner's Examination read againſt him.

The Priſoner's Examination alſo was read, who confeſſed before the Lords Juſtice's, that he was engaged in a Conſpiracy to raiſe an Inſurrection, in order to reſtore the Catholick Religion in that Kingdom, and recover their Lands from the Proteſtants. He acknowledged alſo, that they intended to have ſurprized the Caſtle of *Dublin*; that he came to *Dublin* for that purpoſe, and that he ſhould have attempted the Caſtle the next Morning, (the 23d of *October*, 1641.) if they had not been apprehended: But he knew of no Letters or Meſſages from *England*, to countenance the Attempt.

Other Witneſſes depoſed, that there was to have been a General Inſurrection in *Ireland*, the 23d of *October*; that it was intended to ſeize all the Caſtles and ſtrong Places in the Kingdom, and to Maſſacre the Proteſtants.

Above an hundred Thouſand Proteſtants ſaid to be murdered in one Province.

It was alſo proved, that the *Iriſh* broke out into an actual Rebellion, on the ſaid 23d of *October* and ſurpriſed the Caſtle of *Charlemont*, where they murdered the Lord *Calfield*; that they alſo ſeized ſeveral other Fortreſſes, and murdered the Proteſtant Inhabitants. And Sir *Charles Coote* depoſed, that upwards of an Hundred Thouſand Proteſtants were maſſacred in the Province of *Ulſter* only. He depoſed alſo, that the *Iriſh* Papiſts ſet up a new Form of Government, by a ſupreme Council, conſtituted Judges and Magiſtrates, and coined Money.

The Pope's Indulgence to the Rebels.

A Bull of Pope *Urban*'s VIII. alſo was read in Evidence, whereby he grants a plenary Indulgence and abſolute remiſſion of all Sins to ſuch *Iriſh* Catholicks as ſhould make War upon the Heretick Proteſtants, and endeavour to extirpate them. Dated at *Rome*, the 25th of *May* 1643. in the 20th Year of his Pontificate.

To

1644. 20 Car. I.

The Priſoner's defence.

To this Charge and Evidence the Lord *Macguire* anſwered, that he knew of no ſuch Examinations as had been produced againſt him, but inſinuated they were forged, and obſerved, that it was impoſſible the Teſtimony of *Coote*, and others, as to the Number of Proteſtants ſworn to be murdered, could be true, becauſe there were not ſo many Proteſtants in that Kingdom: And, if there had been ſeveral murders and outrages committed by others, that did not affect him. He knew nothing of the Plot but by Hearſay, but the Jury giving little credit to the Priſoner's Aſſeverations found him *Guilty:* And it being demanded, What he had to ſay, why Judgment ſhould not be pronounced, he inſiſted again on his Peerage; he objected alſo, that the Judges had no legal Commiſſions, as they acted only by the Power of the Parliament, without any Authority from the King; to which one of the Judges anſwered, that he was made a Judge by the Old Seal, and continued by the Parliament: Then Sentence was paſſed upon the Priſoner as a Traitor. He afterwards petitioned the Commons, that he might have the Favour of being beheaded, but his Petition was rejected, and he was hanged drawn and quartered, on the 20th of *Feb.* according to his Sentence.

Objections to the Juriſdiction of the Court.

Remarks on Macguire's *Trial.*

It is generally held, that a Peer of *Ireland* may be tryed by a Jury of Commoners in *England*, for a Fact committed in *England*: But I do not ſee how an *Iriſh* Peer could be legally tryed here, for a Fact committed in *Ireland*; becauſe, at this rate he loſes his Privilege of Peerage; and there is this further Objection to it, that every Treaſon muſt be laid and proved, to be committed in ſome County of *England*; and here all the Proof was, of Facts committed in *Ireland* only: They alſo read the Depoſition, of the Sheriff of *Dublin* againſt him, though the Sheriff was in *England* juſt before the Trial, and ought to have given his Evidence Perſonally in Court: The Priſoner very juſtly objected, that the Judges who tryed him had no lawful Commiſſion from the King for trying him: For, though one of them had formerly a Commiſſion from his Majeſty, they did not ſit by the King's Authority at this time; but derived their Power from a body of Men in actual Rebellion againſt the Crown, and conſequently the Bench were no leſs Traytors than the Priſoner at the Bar: There is not much Doubt to be made of the Lord *Macguire*'s Guilt; but yet the putting him to Death by thoſe Uſurpers, who could have no Legal Authority to try or condemn him, was Murder in them. It is obſervable alſo, that the Commons made uſe of *Coote*, and other Tools to aggravate matters and teſtifie that there were ten times more Proteſtants murdered in *Ireland* than there really were, and this with an Intention to render the King odious to his Subjects, whom they charged with countenancing the *Iriſh* Rebellion, though nothing could be more falſe and unjuſt: And here we find them tampering with *Macguire*, to acknowledge a Correſpondence between the *Iriſh* Rebels, and the *Engliſh* Royaliſts; but he had the Grace to acquit the King's Party of having any Share in that Inſurrection, though he might poſſibly have ſaved his Life, if he would have humoured the Parliament in this Particular. He was long detained in Priſon, in order to extort ſomething out of him to the prejudice of the Royal Party; and one while had ſo much liberty allowed him in the *Tower*, that he made his Eſcape from thence: He was afterwards indeed retaken; and, when they found he would not anſwer their Purpoſe, they put him to Death by Forms of Law.

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1648-9. 24 Car. I.

Proceedings againſt King Charles I.

The Proceedings of the Uſurpers againſt their Soveregin King CHARLES I. under the Mock Form of a Trial, in the Month of *January*, in the 24th Year of his Reign, *Anno Domini*, 1648-9.

1648-9. 24 Car. I.

An Ordinance for his Trial.

THE Commons began the Year 1648-9, with framing an Ordinance for the Trial of the King, which they ſent to the Houſe of Peers for their Concurrence; but the Lords rejected it, and, that they might not be preſſed any more upon that Head, adjourned for nine Days. Whereupon ſome Members of the Commons moved, that the Lords might be impeached of High-Treaſon, in favouring the grand Delinquent (their King;) however, they contented themſelves with making the following Reſolutions. 1. That the People were, under God, the Original of all juſt Power. 2. That the Commons of *England* being choſen by and repreſenting the People, were the Supreme Power of the Nation. And 3. That whatever was enacted or declared to be Law, by the Houſe of Commons aſſembled in Parliament, had the Force of a Law, though the conſent of the King, and the Houſe of Peers was not had thereto: And thus, having Voted the King and Houſe of Lords uſeleſs, they proceeded to finiſh their Ordinance for the pretended Trial, in the Preamble whereof they recite. "That the King, not "being contented with the many Encroach- "ments made by his Predeceſſors on the "People's Rights, but deſigning totally to ſub- "vert the Conſtitution, and introduce an "Arbitrary Government, had levyed War "againſt the Parliament, whereby infinite "Miſchiefs had enſued; for which High "and Treaſonable Offences; and to the End, "no chief Officer or Magiſtrate might pre- "ſume for the future to attempt the enſlaving "and deſtruction of the Nation with Im- "punity; they did Ordain and Enact, that "*Thomas* Lord *Fairfax*, *Oliver Cromwell*, "*Henry Ireton*, (*and an Hundred and Thirty "more*,

Reſolutions of the Commons.

The Judges conſtituted to try the King

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" *more, of whom upwards of Fifty never acted)* " ſhould be Commiſſioners and Judges for the " Trying of the King: And the Lord *Fair-* " *fax*, and all other Officers, Civil and Mili- " tary, were required to be aiding and aſſiſting " to them in the Execution of their Commiſſi- " on; and it was provided that this Act ſhould " remain in force for one Month and no " longer.

Bradſhaw *Preſident.*

John Bradſhaw, Serjeant at Law, was appointed their Preſident, Mr. *Steel*, was made their Attorney-General, and Mr. *Cook*, their Solicitor, to manage the Evidence: A Court alſo was erected at the upper End of *Weſtminſter-Hall*, and the King brought to *Cotton-Houſe*, that he might be near their Mock Tribunal.

Reſolutions concerning the Tryal.

Theſe pretended Judges, ſitting in private in the Star-Chamber, the 20th of *January*, reſolved that the Method of Proceeding as to the reading the Commiſſion, ſending for the Royal Priſoner, asking him Queſtions, *&c.* ſhould be left to their Preſident, on whom they conferred the Title of *LORD PRESIDENT*. And it was further reſolved, that if his Majeſty carried it inſolently, ar contemptuouſly to their Mock Court, It ſhould be left to their Lord Preſident to reprehend him, and admoniſh him of his Duty, or command him to be taken away: But as to the Priſoner's taking off his Hat, they determined not to inſiſt on it that Day; and if he deſired Time, the Lord Preſident ſhould give him Time. It was ordered alſo, that Mr. *Liſle*, and Mr. *Say*, ſhould be Aſſiſtants to the Preſident, and ſit near him. After which the Preſident, and the pretended Judges, attended by their Officers, and One and Twenty Gentlemen armed with Partizans, went down to the Court erected in *Weſtminſter-Hall*, a Sword of State and Mace being carried before them: The Preſident having placed himſelf in a Crimſon-Velvet Chair, and the reſt of the Members on each Side of him, on Benches hung with Scarlet, their Guard of Partizans divided themſelves on each Side the Court: Then the Ordinance for erecting this pretended Court was read, and the Commiſſioners called over, of whom Sixty-ſeven appeared and anſwered to their Names. After which the King was brought from *Cotton-Houſe*, and placed at the Bar, beneath his High and Mighty Judges: And having looked for ſome time with a Majeſtick Air upon his Sovereign Subjects ſeated upon the Bench, He ſat down in a great Chair provided for him, without moving his Hat, or paying any reſpect to his pretended Judges.

The King brought before the Regicides.

Bradſhaw's *Speech to his Majeſty.*

Then *Bradſhaw* with unparallelled Impudence told the King, That the Commons of *England* aſſembled in Parliament, deeply ſenſible of the Evils and Calamities he had brought upon the Nation, and of the Innocent Blood he had ſpilt; in purſuance of what they owed to God, to Juſtice, the Kingdom, and themſelves; and in purſuance of the Truſt repoſed in them by the People, had Reſolved to bring him to his Trial, and had thereupon Conſtituted this High Court of Juſtice, before which he was now brought to hear his Charge: Then *Cook* their Solicitor, in the Name of all the People of *England*, exhibited the Charge; which ſet forth, That *Charles Stuart*, being admitted King of *England*, and entruſted with a limited Power to govern according to Law; and by his Truſt, Oath and Office being obliged to uſe the Power committed to him for the good of the People; out of a wicked Deſign to erect in Himſelf and his Family a Tyrannical Power, and to overthrow the Rights and Liberties of the People, had Traiterouſly and Maliciouſly levyed War againſt the Parliament and the People therein repreſented, particularly at *Beverly*, *Nottingham*, *Edge-hill*, *Naſeby*, &c. Whereby the ſaid *Charles Stuart* had cauſed many Thouſands of the free People of this Nation to be ſlain, Families had been ruined, Treaſure waſted, Trade decayed, and many Parts of the Land ſpoiled and become deſolate; And this, in order to advance the perſonal Intereſt, Will, Power, and pretended Prerogative of the ſaid *Charles Stuart*, againſt the publick Intereſt, Rights and Liberties of the People, by whom he was entruſted as aforeſaid: Wherefore the ſaid *John Cook* did, for the Treaſons and Crimes aforeſaid, on the behalf of the People of *England*, Impeach the ſaid *Charles Stuart*, as a *Tyrant*, *Traytor*, and *Murderer, and a publick and Implacable Enemy to the Common-wealth*; and prayed that Juſtice might be done upon him.

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The King refuſes to acknowledge their Juriſdiction.

The Preſident requiring the King's Anſwer to the Charge, His Majeſty demanded by whoſe Authority he was brought thither, at a Time when he was engaged in a Treaty with Parliament; adding, that there were many unlawful Powers in the World, and that theirs ſeemed to be no better than that of Pyrates and Robbers: He told them he was their King, and had a Truſt committed to him by God which he would not betray, together with the Liberties of the People, by anſwering to an unlawful Power, as he held that Court to be: To which the Preſident replied, They ſat there by the Authority of the Commons of *England*, and it did not become him to Interrogate the Court in the Condition he was. The King ſaid, there was a God in Heaven that would call them to an Account for the Authority they had uſurped; and that it was as great a Sin to ſubmit to an unlawful Authority, as it was to reſiſt a lawful Authority. To which *Bradſhaw* replied, that in their Apprehenſions, who were his Judges, their Authority was lawful; but the King ſaid, it was not their Apprehenſions or his, that muſt decide that; and abſolutely refuſing to acknowledge their Juriſdiction, he was carried back to *Cotton-Houſe*.

His Contempt Recorded.

The King being brought before this Mock Tribunal again the two ſucceeding Days, and ſtill refuſing to acknowledge their Authority, his Contempt (as they called it) was Recorded.

Witneſſes examined againſt him.

Then they proceeded to examine Witneſſes againſt him in the Painted Chamber, and take their Examinations in Writing; and on the 25th the Witneſſes atteſted the Truth of their Depoſitions in open Court, upon Oath.

Who depoſe that the King began the War.

Several Witneſſes depoſed, that the King began the War in the Month of *July*, 1642. and others, that he charged at the Head of his Troops at *Edge-hill*, *Cropredy-Bridge*, *Newbury*, *Naſeby*, *&c.* Whereby they propoſed to ſhew that his Majeſty was the Author of the

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War, and the Occaſion of all the Blood that had been ſhed.

That he was not ſincere in his Treaties with them.

They endeavoured alſo to traduce his Majeſty as inſincere in his Treaties with the Parliament; for which Purpoſe, *Henry Gooche*, of *Gray's-Inn*, was produced as a Witneſs, who depoſed that he waited on his Majeſty at the *Iſle* of *Wight*, and acquainted him that he had many Friends; that, ſince he was pleaſed to juſtifie the Parliament in taking up Arms, moſt of the *Presbyterian* Party, both Soldiers and others, would ſtick cloſe to him: To which the King anſwered, that he would have his old Friends know, that though for the preſent he was content to give the Parliament leave to call their own War what they pleaſed, yet that he neither did at that Time, or ever could decline the Juſtice of his own Cauſe: The Deponent alſo told the King, that his Buſineſs was much retarded, becauſe his Friends wanted Commiſſions to act under, to which the King anſwered, that while he was engaged in a Treaty with the Parliament, he could not in Honour iſſue out any Commiſſions; but if the Deponent would apply to his Son, they might have any Commiſſions they deſired, and he would order the Marquis of *Hertford* to write to his Son in his Name.

Richard Price, a *London* Scrivener, alſo depoſed, that the King's Agents in *London*, tampering with the Independents, to draw them off from the Parliament, and being diſcovered, the Committee of Safety directed thoſe that were tampered with, to comply ſeemingly with the King's Agents; and the Deponent, having obtained a ſafe Conduct thereupon, attended the King at *Oxford*, in *January* 1643, to treat with his Majeſty on that Subject. When his Majeſty obſerved to the Deponent, that the Independents were the moſt active Men in the Kingdom againſt him, and deſired the Deponent would endeavour the bringing them over to his Intereſt; promiſing on the Word of a King, if they would join him, and be as active for him, againſt the Parliament, as they had been againſt him, he would grant them whatever Freedom they could deſire.

The King brought before the Regicides to hear his Sentence.

The King being brought to the Bar again, on *Saturday* the 27th of *January*, where he found Sixty-ſeven of his pretended Judges upon the Bench, *Bradſhaw* told him, that he had ſeveral Times been brought before that Court to anſwer the Charge of High-Treaſon, *&c.* that had been exhibited againſt him in the Name of all the People of *England*. (Whereupon a Lady cryed out, *no, nor half the People of England)* However the Preſident went on, and having recapitulated the Proceedings, obſerved again that his Majeſty had there ſeveral Times refuſed to anſwer or own them for a Court, and that his Contumacy had been thrice Recorded: But they were ſtill ready to hear him in any Thing relating to his Defence, though they ſhould not ſuffer any Thing to be offered againſt their Juriſdiction.

The King anſwered, that ſince they would not admit it, He ſhould waive ſaying any Thing further to their Juriſdiction, though he thought the ſettling That, moſt conducive to the Peace of the Kingdom, and the Liberty of the Subject: That, if he had regarded his own Life more than the Welfare of the Publick, he ſhould have made a particular Defence, which would at leaſt have delayed an ugly Sentence, that he believed would paſs upon him. He ſaid a haſty Sentence once paſſed, might ſooner be repented of, than recalled. And therefore, more for the Kingdom's Sake than his own, he deſired to be heard by the Lords and Commons, before they proceeded to paſs Sentence. That this was but a ſmall Delay, and he might offer Reaſons conducive to the Peace and Welfare of the Kingdom; and therefore conjured them once again, if they had that Regard to the publick Welfare they pretended, that he might be heard by both Houſes before Sentence paſſed.

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He deſires to be heard by both Houſes.

The Commiſſioners hereupon withdrew into the Court of Wards, to conſider of his Majeſty's Requeſt, and being returned, *Bradſhaw* told him, that they were his Judges, conſtituted by the higheſt Authority; and that Judges ought no more to delay, than to deny Juſtice according to the Great Charter.

That it was their Unanimous Reſolution, they ſhould proceed to Judgment without further Delay; and having endeavoured to juſtify their Proceedings, by inſtances of ſeveral Rebellions in this and other Kingdoms, he ſaid, he apprehended theſe to be good Precedents for their bringing him to Judgment, contending that the King was Guilty of the whole Charge: Adviſed him to reflect on the greatneſs of his Sins, and hoped the Conſideration of them would produce a ſerious Repentance, and prayed God would have Mercy upon his Soul. After which he ordered the Sentence to be read, being of the following Tenour.

The Sentence pronounced on the King.

" That whereas the Commons had by the
" late Act Authoriſed and Conſtituted them
" an High Court of Juſtice, for the trying
" and judging, of *Charles Stuart*, King of
" *England*, for his Treaſons; *&c.* by virtue
" whereof, he had been three ſeveral Times
" Convented before them, and refuſed to an-
" ſwer the Charge exhibited againſt him;
" they being ſatisfied in their Conſciences, as
" well from the Notoriety of the Fact, as by
" Examination of Witneſſes, that the ſaid
" *Charles Stuart* had been guilty of the wick-
" ed Deſigns and Endeavours in the Charge ſet
" forth; and that he had been, and was, the
" Occaſion, Author and Contriver of the
" ſaid Unnatural, Cruel and bloody Wars,
" and thereby guilty of High Treaſon; and
" of the Murders, Rapines, Burnings, Spoils,
" Deſolations, Damages and Miſchiefs to this
" Nation, acted and committed in the ſaid
" Wars; *They do adjudge that he the ſaid*
" Charles Stuart, *as a Tyrant, Traytor and*
" *Murderer, and publick Enemy to the good*
" *People of this Nation, ſhall be put to Death,*
" *by ſevering his Head from his Body.*

Then the Preſident ſaid, *This Sentence, now read and publiſhed, is the Act, Sentence, Judgment and Reſolution of the whole Court:* And all the Regicides preſent ſtood up thereupon to expreſs their Aſſent; whoſe Names are *John Bradſhaw*, Preſident; *John Liſle*, *William Say*, *Oliver Cromwell*, *Henry Ireton*, Sir *Hardreſs Waller*, Sir *John Bourchier*, Kt.

The Names of 67 Regicides, preſent at the paſſing Sentence on the King.

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Kt. *William Heveningham*, *Iſaac Pennington*, Alderman of London; *Henry Marten*, *William Purefoy*, *John Barkſtead*, *Matthew Tomlinſon*, *John Blackſtone*, *Gilbert Millington*, Sir *William Conſtable*, Bart. *Edmund Ludlow*, *John Hutchinſon*, Sir *Michael Liveſey*, *Robert Tichbourne*, *Owen Roe*, *Robert Lilburne*, *Adrian Scroop*, *Richard Dean*, *John Okey*, *John Hewſon*, *William Goffe*, *Cornelius Holland*, *John Carew*, *John Jones*, *Miles Corbet*, *Francis Allen*, *Peregrine Pelham*, *Daniel Blagrave*, *Valentine Walton*, *John Downs*, *Thomas Horton*, *Thomas Hammond*, *Nicholas Love*, *Simon Meyne*, *Thomas Wayte*, *Thomas Harriſon*, *Edward Whaley*, *Thomas Pride*, *Iſaac Ewers*, *Tho.* Lord *Grey*, *of Groby*, Sir *John Danvers*, Sir *Thomas Maleverre*, Bart. *John Moore*, *Vincent Potter*, *Auguſtine Garland*, *John Dixwell*, *George Fleetwood*, *Peter Temple*, *John Alured*, *Henry Smith*, *Humphrey Edwards*, *Gregory Clement*, *Thomas Wogan*, Sir *Gregory Norton*, Bart. *Edmund Harvey*, *John Venn*, *Thomas Scot*, *Thomas Andrews*, Alderman of London, *William Cawley*, *Anthony Stapely*, and *James Temple*.

The King uſed barbarouſly.

His Majeſty preſſed earneſtly to be heard, after the Sentence was read, but *Bradſhaw* rudely refuſed it, and ordered him to be taken away. As he went down the Steps ſome of the Soldiers blew their Tobacco in his Eyes, and ſome Spit in his Face, while others as they were taught by *Hugh Peters* and their Officers, cried out, *Juſtice*, *Juſtice*, which his Majeſty obſerved, they would do as loudly againſt any of their own Generals for a little Money.

A Warrant for the King's Execution.

On *Monday* the 29th of *January*, Forty-eight of the Regicides met again in the Painted Chamber, and ſigned a Warrant for the Execution of the King, the next Day, in the open Street, before the Gates of his own Palace of *Whitehall*; and accordingly his Majeſty was brought through the Park on Foot from St. *James*'s to *Whitehall*, on *Tueſday* the 30th of *January*, the Way being lined with Soldiers and a Guard of Halberdiers attending him. The King being permitted to remain ſome time in a Room at *Whitehall*, attended only by Biſhop *Juxon*. Mr. *Nye* and ſeveral other Fanatick Fathers, offered to aſſiſt his Majeſty in his laſt Moments; but he thanked them for the Tender of their Service, and ſaid, as they had ſo often cauſleſly prayed againſt him, he would not admit their praying with him at that time; however, if they pleaſed, they might pray for him. His Majeſty, having finiſhed his Devotion, and taken a piece of Bread and a Glaſs of Wine, was led by Colonel *Hacker*, into the Banqueting Houſe, and from thence through one of the Windows to the Scaffold erected before it, where he found two Executioners masked and dreſſed in looſe Frocks, who had provided Cords and Staples to drag him to his Execution, if he reſiſted; however his Majeſty not at all terrified at theſe Preparations, with a compoſed Countenance, addreſſed himſelf to the People about him; declaring that he did not begin the War, and calling God to Witneſs, to whom he was juſt going to give an Account, That he never intended to encroach on the Privileges of Parliament: He acknowledged the Juſtice of God, however, in ſuffering him to die by an unjuſt Sentence, he himſelf having ſuffered an unjuſt Sentence to be executed (on the Lord *Strafford*.) Then turning to Biſhop *Juxon* he ſaid, that good Man could Witneſs, for him, he had forgiven all the World, even thoſe that had been the chief Cauſers of his Death: He wiſhed they might repent, and prayed with St. *Stephen*, that this Sin might not be laid to their Charge; but told them they would never proſper, unleſs they gave God, the King, and the People their Due: That they muſt give God his Due, by regulating the Church according to the Scriptures, for which he propoſed the calling of a free National Synod: As to the King's Due, the Laws of the Land would inſtruct them in that: And the People's Due was Liberty and Freedom, which no Man deſired more than himſelf, and for the endeavouring to reſtore which he was now brought to that Place. If he would have yeilded to arbitrary Sway, to have all Laws, Eccleſiaſtical and Civil, changed according to the Power of the Sword, he needed not have come thither; and wiſhed it might not be laid to their Charge, that he was the MARTYR of the People, concluding with a Prayer, that they would take ſuch Courſes as were for the Good of the Kingdom, and their own Salvation.

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His Speech on the Scaffold.

The Biſhop putting the King in Mind, that it might be expected, he ſhould declare what Faith he died in, his Majeſty thanked him for putting him in mind of it, and ſaid, he died a Chriſtian, according to the Profeſſion of the Church of *England*, as he found it left him by his Father, of which the Biſhop was a Witneſs; and then, preparing for the Block, ſaid, *I go from a corruptible to an incorruptible Crown*: Then he gave his *George* to the Biſhop, and ſaid, REMEMBER, with a particular Emphaſis; (which gave the Regicides ſome Uneaſineſs, till they underſtood the Meaning of it from the Biſhop;) then laying his Neck upon the Block, and ſtretching out his Hands, which was the Sign, one of the Executioners ſevered his Head from his Body at one Blow: But it was afterwards put into a Coffin with his Body, and expoſed for ſeveral Days, both in the Palaces of *Whitehall* and *St. James*'s to the View of the People. His Majeſty was in the forty-ninth Year of his Age when he was thus put to death, by thoſe Sons of Violence, who were not content with his Death, but waſhed their Hands in his Blood, and gloried in the Parricide.

Biſhop Juxon hardly uſed.

Biſhop *Juxon*, who attended his Majeſty on the Scaffold, had all his Papers taken from him, his Scrutores, Boxes, and his very Pockets were ſearched; and he was threatned very ſeverely, by the Regicides, if he did not diſcover what the King meant by bidding him REMEMBER; to which the Biſhop anſwered, that the King bid him remember to carry that ſupreme Command to his Son, that if ever he was reſtored to the Crown, HE

SHOULD

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SHOULD FORGIVE THE AUTHORS OF HIS FATHER'S DEATH, which ſurely muſt have put them into ſome Confuſion, if they were not hardened beyond all Senſe of Shame.

The Royal Corps interred at Windſor.

The King's Servants afterwards made their Application to the Men in Power, that the Royal Corps might be interred, with the Kings his Predeceſſors, in *Henry* the Seventh's Chapel; but this they refuſed, alledging, that Multitudes of People would probably reſort thither, out of a ſuperſtitious Reſpect to his Memory, which might be dangerous to their Government; but at length they agreed it ſhould be buried in St. *George*'s Chapel at *Windſor*, where the Duke of *Richmond*, the Marquis of *Hertford*, the Earl of *Southampton*, and the Earl of *Lindſey*, ſaw it interred, in the ſame Vault where King *Henry* VIII. and his Queen, *Jane Seymour*, lie; but *Whitchcott*, the Governor of the Caſtle, would not ſuffer the Burial Service to be uſed after the Manner of the Church of *England*. And here the Corps of the Royal Martyr ſtill remains, as appears by unqueſtionable Evidence, notwithſtanding the Doubts of the Lord *Clarendon*, and ſome others, that it was removed elſewhere.

Remarks on the Proceedings againſt King Charels I.

It has been obſerved of the *Engliſh*, that though they are generally a religious, loyal, and virtuous People, yet when they are wicked, they exceed all others in bold and daring Villanies. Sovereign Princes have been privately aſſaſſinated and murdered by their rebellious Subjects in other Countries; but the *Engliſh* Sectaries were the firſt that ever openly avowed they had a Right to try and put their Kings to Death, and actually arraigned their Sovereign in ſo ſolemn a Manner. It is doing thoſe Regicides too much Honour, though they followed the Forms, to ſuppoſe there was any Colour of Law to juſtify their Conduct; for it is a Maxim with us, never diſputed till this Rebellion, that the Perſons of our Kings are ſacred; and by an Act of Parliament ſtill in Force, it is declared, *That neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively or repreſentatively, nor any other Perſons whatſoever, had, have, hath, or ought to have, any coercive Power over the Perſon of the King*; much leſs could a ſmall Remnant of the Commons, who had expelled a Majority of their own Members, and wanted the Concurrence of the Houſe of Lords, have any Authority to judge and condemn their King; and indeed they firſt voted away the Conſtitution; before they pretended to ſit in Judgment on their Sovereign: They reſolved, *That the Commons of* England *were the ſupreme Power of the Nation; and that whatever was enacted or declared to be Law by the Houſe of Commons, had the Force of a Law, though the Conſent of the King and the Houſe of Peers was not had thereto*; which every one knows to be falſe at this Day, and yet it was on a Suppoſition that theſe Propoſitions were true, that they proceeded to judge their King; conſequently the whole Proceeding was an Act of Violence: They were all guilty of the fouleſt and moſt conſummate Treaſon, when they arraigned and proſecuted the King for Treaſon againſt themſelves, who were not ſo much as one of the three Eſtates; nor would their Proceedings have been Juſtifiable, if they had had that Authority, to call their King to an Account, they pretended to; for the Evidence they produced to convict him was far from proving the two grand Points they inſiſted on, (*viz.*) 1. That the King began the War, and, 2. That he was the Occaſion of the Continuance of it. 1648-9. 19 Car. I.

For the Witneſſes, who depoſed the King began the War, make the marching of his Troops into *Beverly* in *July* 1642. the firſt Act of Hoſtility committed by his Majeſty's Forces; which was long after the Parliament had armed their rebellious Mobs, and driven the King from his Palace of *Whitehall*; it was after they had ſeized the Royal Navy, new-modelled the Militia of *London*, and ſeveral other Counties, and armed them againſt the King; and after they had ſurprized the Town of *Hull*, and ſeized his Majeſty's Magazines and Stores there, which were moſt notorious Acts of Hoſtility, if any thing can be accounted ſuch; and conſequently it muſt be admitted, the Parliament began the War.

And it is as evident, they were the Occaſion of the *Continuance* of the War; for in all the Treaties between the King and Parliament, after the Commencement of the War, whether at *Oxford*, *Uxbridge*, *Newcaſtle*, the *Iſle of Wight*, or elſewhere, they ever inſiſted, on the aboliſhing Epiſcopacy, and the whole Eccleſiaſtical Conſtitution, and the Eſtabliſhment of Presbytery, or ſomething worſe. They alſo demanded the Power of appointing the Great Officers of State, the Command of the ordinary Militia, and a Power to raiſe what Forces they pleaſed, by Sea and Land, and to levy Money on the Subjects to pay them, by their own Authority; And, laſtly, that he ſhould deliver up his faithful Friends and Followers to their Mercy. And from theſe Demands the Commiſſioners for the Parliament at the Treaty of *Uxbridge*, were ordered *not to recede one Tittle*. Even *Rapin*, Vol. xii. p. 268, 271. ſays, "It is "evident that the Parliament intended to "leave the King only an empty Title, and "inveſt themſelves with the Sovereignty, "and that not by Artifice, but openly and "publickly; that their Aim was to deſtroy "entirely the Worſhip of the Church of "*England*; to aſſume to themſelves the So-"vereignty, under Colour of abridging the "Power of the Crown, and to change the "Conſtitution in Church and State." And ſurely thoſe who inſiſted on theſe unjuſt and unreaſonable Terms, muſt be allowed to be the Occaſion of the *Continuance* of the War.

To ſay that it was only the Parliament's *Diſtruſt* of the King that occaſioned the Continuance of the War, and that it was the King's Inſincerity that prevented a Peace, is ridiculous; when their Friends admit, that nothing leſs than the Deſtruction of the Conſtitution in Church and State, and their being veſted with an abſolute uncontroulable Power, would ſatisfy them: Had the King been never ſo inſincere, they had already extorted ſuch Acts of Parliament from him, and retrenched his Prerogative to that Degree, that

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that they had very little to fear from that Quarter; and if thoſe Acts had not been ſufficient, His Majeſty offered to paſs what Acts they deſired for their Security. But after all, this want of Sincerity, ſo much talked of in the King, appears to be no more than this, that he ſometimes treated with one Party of his rebellious Subjects, and ſometimes with another, in order to put an End to the War; and if he could have made an Advantage of their Diviſions, re-eſtabliſhed himſelf upon the Throne, reſtored the Conſtitution, and delivered his People from the arbitrary Dominion and Oppreſſion of the Uſurpers, I believe few People, at this Day, will look upon ſuch ſeparate Treaties as Arguments of Inſincerity, or to deſerve any manner of Cenſure.

And if the King did yield to ſome of the Rebels Demands, with a View that, when Peace was reſtored, and a free Parliament called, the Houſes themſelves would deſire they ſhould be repealed, I cannot ſee the Immorality of ſuch a Proceeding; if the King knew he had not a Power of repealing the Laws, and altering the Conſtitution, without a legal Parliament, and his Conceſſions in this reſpect therefore would be of no force, his Enemies were ſenſible of this too, and therefore, it was not only unreaſonable and unjuſt to inſiſt on ſuch Terms, but extremely weak and fooliſh to ſuppoſe they would ever be ſubmitted to, when the People returned to their Senſes and their Duty. If they would have been contented with the antient legal Conſtitution, which they pretended at firſt to contend for, they might have received a full Pardon for all that was paſſed, and had their Liberties and Properties ſecured to them, beyond a Poſſibility of their being infringed: But it is evident, it was DOMINION they fought for, and to make their Sovereign, as well as their Fellow Subjects, SLAVES. Nor do I perceive any material Difference between the *Presbyterians* and *Independants* in this Reſpect; they both of them, in their Turns, inſiſted upon much the ſame Terms. The *Presbyterians* fought the King in the Field, and refuſed to make Peace with him, unleſs he would yield to the unreaſonable Demands above-mentioned; they diveſted him of all his Prerogatives, made him a cloſe Priſoner, and delivered him into the Hands of his Murderers; and the *Independants* indeed committed the laſt horrid Act, and put him to death. The one would have buried him alive, and the other, perhaps, more mercifully took away his Life, and rendered him a glorious Martyr. If he would have conſented to an abrogation of all the Laws, and have inveſted either Party with an arbitrary unlimited Power, as the King himſelf obſerved on the Scaffold, he had never been brought thither; and therefore it may, with great Propriety be ſaid, he ſuffered for defending the Conſtitution in Church and State, and conſequently for the Liberties and Properties of his Subjects.

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Duke Hamilton's *Trial.*

The Trial of JAMES Duke of *Hamilton* and Earl of *Cambridge*, before another pretended *High Court of Juſtice*, for *High-Treaſon againſt the Kingdom and People of* England, which began the 9th of *Feb.* 1648-9.

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The Charge againſt him.

HE was impeached by the Name of *James Earl of Cambridge*; for that, on or about the Nineteenth of *July* then laſt paſt, he had traiterouſly invaded the Kingdom, and levied War, in Behalf of the late King, againſt the Kingdom and People of *England*, committing many Murders, Outrages, *&c.* And particularly that, on or about the Twentieth of *Auguſt* then laſt paſt, he did join Battle, and fought the Forces of the Parliament, near *Preſton* in *Lancaſhire*, and did, then and there, murder Colonel *Thornby*, and others.

His Plea.

To this Charge the Duke pleaded 1. that he was Duke of *Hamilton* in *Scotland*, and by the Authority of the Parliament of that Kingdom, the ſupreme Power of the Nation, he undertook the command of their Armies, for juſtifiable Ends. 2. That he was born in *Scotland*, before his Father's Naturalization in *England*, and being an Alien born, could not be tried for High-Treaſon againſt the Kingdom of *England*. 3. That he was not only a Priſoner of War, but had ſurrendered upon Articles whereby his Life was ſecured; and deſired Counſel might be aſſigned him to argue theſe points of Law, and accordingly Mr. *Chute*, Mr. *Hales*, Mr. *Parſons*, and Dr. *Walker* were aſſigned his Counſel; but his petitioning for Time to ſend for his Witneſſes was not granted.

The Evidence.

The Priſoner being brought to the Bar the 17th of *February*, produced Duplicates of his Commiſſion, and his Orders from the Parliament, and the Committee of Eſtates in *Scotland*; and the Declaration containing the Ends of the Engagement was read.

The Articles of Capitulation alſo were read, whereby it appeared that the Duke ſtipulated for his Life; but ſome of the Officers, who treated with the Duke averred, that they only meant to ſave his Life from the Soldiers, and from the civil Power; others inſiſted, that the Treaty was in general Terms, and they underſtood hisLife could not be taken away, either by the Civil or Military Powers, the Duke having ſurrendered to them upon condition, that his Life and the Lives of thoſe under his Command, ſhould be ſpared.

Then the Counſel for the Parliament, produced the reſt of their Evidence againſt the Duke: One of their Witneſſes depoſed, he heard his Grace ſay, that he was ſome Years younger than King *Charles* I. from whence it was inferred he was born after King *James*

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came to the Crown, and consequently might be deemed a Subject of this Kingdom, and guilty of Treason: Other Witnesses deposed, that he joined Sir *Marmaduke Langdale*, who commanded the late King's Forces in the North of *England*; that he fought the Forces of the Parliament at *Preston*, &c.

The Duke's Defence.

To which Charge and Evidence his Grace made the following Defence: He said, that Capitulations had always been held inviolable by all Princes and States, as well with their Subjects, as with Independant Nations; that Prince *Rupert*, and the Lord *Cottington*, though excepted from Pardon by an Ordinance of Parliament, were notwithstanding, upon the Articles for the Surrender of *Oxford*, permitted to transport themselves beyond Sea; as were also the Earl of *Bristol* and Lord *Paulet* upon the Articles for the Surrender of *Exeter*, though both of them were excepted from Pardon. That the Lord *Fairfax*, and the rest of their Officers, had always carefully observed all Articles of Capitulation, and had frequently written to the Parliament on that Subject; and his Grace hoped he should meet with the like Justice that others had done: He said it had not been sufficiently proved that he was a *post natus*, consequently he must be deemed an Alien, and could not be guilty of High-Treason in invading the Kingdom: That as to Sir *Marmaduke Langdale*, he neither received Orders, or the Word from him, but marched and quartered apart; but, had it been otherwise, it could not have been Treason in his Grace, to have joined Sir *Marmaduke*; being commanded by the Parliament of *Scotland*, to join all those who should concur with him, in prosecuting the Ends of the Engagement.

He prayed also, that an Order of Parliament might be read, importing, that no Quarter should be given to any of the *Irish* in Arms, from whence he inferred, that others might have Quarter given them. And another Order was read, wherein it was declared, that all the *Scots* that entered *England*, should be deemed Enemies, and all the *English* and *Irish* that joined them, Traitors.

That he, having his Birth, Honour, and Fortune in *Scotland* was bound to pay Obedience to the Orders of that State, and to undertake the Command of General, for purposes which he conceived lawful: That the entering of the *Scots* Army into *England*, in the Year 1640, was not accounted treasonable, but was very acceptable to this Kingdom, who gave them their *brotherly* Assistance; and the late unfortunate Army was designed for as good Ends; that he was born before his Father's Naturalization, and so could not be deemed an *Englishman*, and his being made an *English* Earl, did not naturalize him: That Articles were to be expounded according to the plain Meaning of the Words, and not by the mental Reserves of the Officers engaged in the Treaty: That had he only surrendered a Prisoner of War, without stipulating for his Life, his Life ought not to have been touched, much less when there was an express Article for saving their Lives: That if these Articles were violated, and the War should be revived, it would prove a perfect Butchery, since none would ever trust to a Capitulation for the future; nor was his Escape out of Prison any Breach of the Articles, which required only, that he should deliver himself up a Prisoner, and not that he should remain so.

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The Defence made by his Counsel.

To which, his Grace's Counsel added, that his Obligation and Subjection to the Kingdom of *Scotland* was indispensible, and indissoluble; and that he could no more refuse the Commands of that Kingdom, than a Native of *England* living here could disobey the Commands of the Parliament of *England:* That no Man could be the Subject of two distinct *Kingdoms*; and whatever Obligations his Grace might have to *England*, they could not come in Competition with what he owed *Scotland:* That no Treason could be without a Breach of Faith and Allegiance due to them against whom it was committed: That *England* and *Scotland* were two independent Kingdoms; and though the Allegiance due to the King was the same in both Kingdoms, yet the Kingdoms were distinct, when the Duke undertook this Expedition. The Administration was not in the King then, but in the respective Parliaments of each Kingdom; and as the Duke's Allegiance to the Kingdom of *Scotland* was antienter and stronger than any Tie that could be laid upon him in *England*, what he did by the Command of the Kingdom of *Scotland*, might make him an *Enemy* to the Kingdom of *England*, but not a Traitor: That in the Hostilities between the two Kingdoms, none of the Prisoners on either Side, had ever been put to Death as Traitors, because the Nations were independent of each other; nor could the Duke's making use of the Assistance of *English* Forces render him a Traitor: Indeed if an *Englishman* conduct a foreign Army against his Country, or a Foreigner residing here, assist the *English* in a Rebellion, it is Treason in either of them, for a Native's commanding of a foreign Army, does not make him an Alien; and an Alien residing here, and assisting *English* Rebels, is by the Law of *England* deemed a Traitor, because he owes a local Allegiance.

But where an Alien invades the Kingdom with a foreign Force, though he does, join *English* Rebels, he is still deemed an Enemy, and not a Traitor.

The Council for the Commonwealth reply.

To this Defence, Mr. *Steel*, Attorney-General for the Commonwealth, replied, that the Prisoner was very far from being under any Necessity of taking that Command upon him, that he was a principal Member of that Parliament, under which he would shelter himself, and advised the Expedition; that his accepting the Commission, and the Oath he had taken, were strong Arguments also of a full and free Consent; nor would the *Scots* ever have trusted him with the Command of their Forces, if they had not been assured of his Heart as well as his Hand, in the Execution of their Design; that his Letters to Sir *Marmaduke Langdale* also, wherein he prays for an Encrease of their Distractions in *London*, and for his Friends in *Colchester*, shewed he was not an unwilling Instrument, but one who exceeded, rather than fell short, in the Execution of his Commission.

As

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As to the ſecond Part of his Plea, *That he was a* Scotſman, *and an Alien*, Evidence had been given, that he was one of the *poſt nati*, born after King *James*'s Acceſſion to the Crown of *England*; and ſince he had not ſhewen the contrary, this ought to be taken for granted.

As to that Objection, *That it was abſurd to ſay, a Man might owe a natural Allegiance to two ſeveral Kingdoms*, he anſwered, it was ſo in a phyſical Senſe; but by Conſtruction of Law, he that was born in *Scotlamd*, might alſo owe an Allegiance to *England*, as had been reſolved in *Calvin*'s Caſe; and in like manner it had been held for Law, that the Natives of *Gaſcoigne* and *Aquitain*, while under the Dominion of the King of *England*, were Denizens and Subjects of *England*.

And as there was a *Ligeantia Regis*, ſo there was a *Ligeantia Regni*; as Allegiance was formerly due to the King in his politick Capacity, ſo it was now due to the Commonwealth, who were poſſeſſed of the ſame Sovereign Power the King anciently had; however, as the Priſoner had been guilty of Murder, there was no need of any Denization to find him guilty of that.

Then he returned to maintain the Charge of Treaſon, and obſerved, that by 4 *Jac.* I. Offenders in Treaſon were to be tried where they were apprehended, in which Kingdom ſoever the Treaſon was committed.

He alſo attempted to ſhew, that the Kingdom of *Scotland* owed Homage to the Crown of *England*, and therefore the Natives of *Scotland* ought to be looked upon as Subjects of *England*.

He obſerved further, that the Priſoner had contributed to his own Denization; for receiving a Writ of Summons, 15 *Car.* commanding him *ex fide & Ligeantia ſua*, to appear in Parliament, as a Peer of this Realm, he did accordingly appear, and act in that Parliament, and was choſen of ſeveral Committees in Affairs of great Importance to this Kingdom, which was inconſiſtent with his being an Alien.

Another Argument he uſed to prove the Priſoner a Traitor, was, That it appeared by his own Confeſſion, and the Declaration he made on the entering on this Expedition, that the Nations were at Amity, and his coming in a hoſtile Manner to invade the Kingdom, in a Time of Peace, therefore made him a Traitor. Treaſon was properly a Breach of Truſt.

As to that Part of his Plea, *That he ſurrendered upon Articles, whereby he was to have his Life*, he ſaid, theſe Articles could not bind the Civil Power of the State; for, if they did, they muſt amount to a Pardon of Treaſon; an Authority that could never be ſuppoſed to be delegated to Military Officers: Beſides, the Intention of the Parties in all Contracts were to be obſerved, and two of the Officers that treated with him, had ſworn, they never intended to include the Civil Power; and, if they had, ſuch an Article would have been void. But if he was intitled to his Life by the Articles, he had loſt the Benefit of them by making his Eſcape; for he who ſurrenders himſelf a Priſoner of War, on Condition of Quarter, and afterwards breaks through what was to have been performed on his Part, has deprived himſelf of that Privilege, which he might otherwiſe have enjoyed. 1648-9. 1 Car. II.

That he had received great Benefit from the Articles already, in not being put to Death by the Sword immediately, (which was all that was intended, by giving him Quarter,) and by being allowed a fair Hearing before the Civil Magiſtrate, and Council to plead his Cauſe; that they might have demanded Judgment againſt their Priſoner, for failing to make good his Plea; for a Plea of Pardon implied a Confeſſion of the Fact; but that he had been indulged, however, in offering what he could in his Defence.

The Duke being brought to the Bar again on *Tueſday* the 6*th* of *March*, the Preſident *Bradſhaw* re-capitulated what *Steel* had argued againſt the Priſoner the Day before; concluding, that the Court rejected his Plea in all its Branches; after which he paſſed Sentence upon him, and ſome other Loyaliſts, who had been tried before the ſame pretended Court, *viz. That their Heads ſhould be ſevered from their Bodies, on* Friday *the ninth Inſtant.* *Sentenced to be beheaded.*

The Duke was afterwards tampered with by *Hugh Peters*, and ſome other Tools of *Cromwell*, to betray his Confederates in *England*; but not being diſpoſed to purchaſe his Life, by ſo baſe a Sacrifice, it was put to the Vote in that ſmall Remnant of the Houſe of Commons on the 8th, *Whether he ſhould be reprieved or not?* which paſſing in the Negative, he was beheaded the next Day, being the 9th of *March* 1648-9. 'Tis ſaid the Duke's Friends offered an hundred thouſand Pounds to ſave his Life; but that *Cromwell* and *Argyle* had reſolved to take him off, to facilitate the reducing of *Scotland* to their Arbitrary Dominion. *He is executed.*

After the Uſurpers had erected a mock Court of Juſtice, for the Trial of their Sovereign, tis now no wonder to ſee them erect another, for the Trial of thoſe who adhered to him: Beſides Duke *Hamilton*, there were tried before this Court, the Earl of *Holland*, the Lord *Capel*, the Earl of *Norwich*, and Sir *John Owen*, who were all condemned; but Application being made to the Commons to ſave them, the Earl of *Norwich* and Sir *John Owen* had their Lives ſpared, and the reſt were executed. *Remarks on Duke* Hamilton's *Trial.*

They not only uſurped that Authority the King once had, but a more abſolute Power than any King of *England* ever pretended to, ſuſpending and altering the Laws at Pleaſure; for by Law, every Subject had a Right to be tried by his Peers. Theſe High Courts of Juſtice, as they were called, were never heard of in *England* before, and had no other Authority than what they received from that Refuſe of a Parliament, which conſiſted chiefly of Regicides: It muſt be looked upon as a Hardſhip upon the Duke alſo, to arraign him as a Traitor to the Commonwealth of *England*, when, according to the Notion they themſelves profeſſed to have, ſince the Depoſing of the King, the Nations were become two Independent Commonwealths. It is true, an Inſurrection in either Kingdom, would have been conſtru-

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1648-9. 1 Car. II.

ed Treaſon and Rebellion againſt the King, when he was upon his Throne: But what Authority could the *Engliſh* Uſurpers yet pretend, over the Subjects of *Scotland*? The aſſerting therefore, that the Duke owed Allegiance to the Commonwealth of *England*, was ridiculous, and the executing him for Treaſon, was certainly Murder in them, though it ſhould be admitted they had acquired the Dominion of *England*.

Their Pretence alſo, that he ought to be adjudged a Traitor, becauſe *Scotland* once owed Homage to *England*, was equally unjuſt, for this Claim had been long waved, and the *Scots* treated as Enemies, and not as Traitors, when the two Nations were in a ſtate of War; and beſides, if Homage was due to the King, it does not follow, it was due to thoſe who had no Right to his Throne, 1648-9. 1 Car. II.

Their other Pretence, that his coming from a Kingdom in Amity with them made him a Traitor, has little more in it; for where the Subjects of one Nation in Amity with another, infeſt the Coaſts of their Allies by Sea or Land, they are to be treated as Pirates and Robbers, and not as Traytors.

But nothing could be more unjuſt than their denying him the Benefit of the Capitulation;, for ſuch Articles had been obſerved by both ſides from the beginning of the War, a very few Inſtances excepted.

1648-9. 1 Car. II.

The Proſecution of JOHN MORRIS, *alias* POYNTZ, and MARY his Wife; ISABEL SMITH, LEONARD DARBY, and JOHN HARRIS, for *Forgery*, before the *Houſe of Peers*. 1648-9. 1 *Car.* II.

1648-9. 1 Car. II.

The Charge.

A Charge was exhibited by *John Brown* Eſq; Clerk of the Parliament, againſt the ſaid *Morris*, and the other Defendants in the Houſe of Peers, on the 25*th* of *June* 1647. for forging and publiſhing a Copy of a pretended Act of Parliament, to convey and aſſure certain Manors and Lands in *Eſſex* to the ſaid *Morris* and his Heirs; and that the ſaid *Morris*, produced and pleaded the ſaid Copy at *Chelmſford* Aſſizes; and the Defendants, *Darby* and *Harris*, falſly ſwore it to be a true Copy of the pretended Act: To which Charge, the Defendants put in their Anſwer in the Houſe of Peers, and the Cauſe was heard at the Lords Bar, where the Forgery being proved, and that no ſuch Act as was pretended, was ever made, *their Lordſhips ſet a Fine of* 1000*l. on the ſaid* Morris, *alias* Pointz. 200*l. on* Iſabel Smith; 400*l. a piece, on the ſaid Witneſſes*, Leonard Darby, *and* John Harris; *and ordered the Defendants to pay* 500*l. to the ſaid* John Brown, *Clerk of the Parliament. That they ſhould be bound to their good Behaviours for Life, and be for ever incapable of being Witneſſes in any Court of Juſtice; and laſtly, that they ſhould be impriſoned during the Pleaſure of the Houſe.*

The Sentence.

A Petition in favour of the Defendants.

Soon after this Sentence, a Petition was delivered to Sir *Thomas Fairfax* the General, by ſeveral of the General Officers and Colonels of the Army, who were alſo Members of the Commons, in behalf of the ſaid *John Morris*, alias *Pointz*, and the reſt of the Defendants, complaining of this Judgment of the Houſe of Lords, and the Oppreſſion and Injuries the ſaid *Morris*, and the reſt of the Defendants, underwent, on account of the ſaid Judgment; and praying that the General would write to the Parliament, in the behalf of the Defendants, that they might remain in the Poſſeſſion of the Manors and Lands abovementioned; be reſtored to their Liberty, diſcharged of their Fines, and that the Cauſe might be determined by the Courſe of the Common Law; but the Editor informs us, that he could not find any further Proceedings in relation to this Buſineſs.

Remarks.

It is very probable, the Matter was compromiſed, for both Sides were notoriouſly in the Wrong: The Forgery ſeems to have been manifeſtly proved; but then the Houſe of Peers had nothing to do to try the Cauſe, and fine and impriſon the Defendants, For no Cauſe can come Originally before that Houſe; eſpecially where Commoners are concerned; All Cauſes are brought thither by Writ of Error or Appeal, from ſome Inferiour Court, unleſs there be an Impeachment by the Commons, which does not appear in this Caſe. The Lords therefore having aſſumed a Juriſdiction that did not belong to them, and the Defendants being Favourites of the Commons and the Army, as appears by the Petition made in their Behalf, by the General Officers, the Lords did not think fit to inſiſt on the Puniſhment of the Forgery, as it deſerved; and indeed, that Remnant of a Houſe of Peers had then very little Influence or Authority: They were in a Manner Tools to the Commons, and their Names only made uſe of to countenance the Rebellion againſt their Sovereign; as they might poſſibly have inſiſted they had a Power of puniſhing ſuch People as were guilty of forging and counterfeiting their Records.

The

1649. 1 Car. II. Morris's Trial.

The Trial of Colonel JOHN MORRIS, late Governor of *Pontefract Caſtle*, during the Grand Rebellion, for *High-Treaſon*, before the Uſurper's Judges, at the Aſſizes held at the Caſtle of *York*, the 16th of *Auguſt*, 1649. 1 *Car.* II.

1649. 1 Car. II.

The Indictment.

THE Colonel was indicted on the Statute of the 25 *Edw.* III. for levying War againſt the late King *Charles*.

When he was arraigned, he ſaid, he conceived that Court had no Power to try him, for he was a military Man, and therefore ought to be tried by a Council of War; and it was with ſome Difficulty that he was perſwaded to plead NOT GUILTY.

His Challenge.

Then the Jury were called over, and Mr. *Brooke* coming to be ſworn as Foreman, the Colonel challenged him; but was told, it was too late, for he was already ſworn. The Colonel replied, he had not kiſſed the Book: The Court ſaid, that was a needleſs Ceremony. Then the Colonel deſired he might challenge him for Cauſe, alledging that he was his Enemy; but the Court would not ſet him aſide. The Colonel afterwards challenged ſixteen more; whereupon *Puleſton*, one of the Rebel Judges ſeemed enraged, and ſaid he had beſt take Care to keep within Compaſs, or, he ſhould give him ſuch a Blow as would ſtrike off his Head: To which the Colonel anſwered, That he might by Law challenge thirty five, without ſhewing Cauſe.

Then Witneſſes were produced, to prove the Colonel was Governor of *Pontefract* Caſtle, which he did not controvert; but he ſaid, there were ſome Points of Law to be diſputed, in Relation to the Indictment; and deſired he might have a Copy of the Indictment, and Counſel to argue the Matters of Law; which being denied him, he obſerved, that the Treaſon laid in the Indictment was, his levying War againſt the late King, which could not be true; becauſe he had acted only for the King, and never againſt him, and produced his Commiſſion; but the Court looking on it, obſerved that it was not granted by the King, but the Prince. The Colonel replied, The Prince had his Commiſſion from his Father, conſtituting him Captain-General, by which he was authorized to grant Commiſſions to him and others; and conſequently he acted by the King's Authority: The Court anſwered this would not avail him, if he had nothing elſe to ſay.

He pleads he had the King's Commiſſion.

The Colonel replied, That by the ſame Power, all Judges, Juſtices of Peace, and Officers, had acted, and all Proceſs of Law was iſſued in the King's Name.

The Court reply the King was the People's Truſtee.

The Rebel Judges ſaid, The Power was not in the King but the Kingdom; he acted but in Truſt for the Kingdom. It was called *The King's Highway*, and *The King's Coin*; but the Property was in the Subject, his Natural and his Legal Power were different Things.

The Colonel anſwered, the King's Legal and Perſonal Power were ſo united, that they could not be ſeparated.

To this the Court replied, If the King ordered him to kill a Man, this Command would not juſtify him; and demanded if he had any Thing more to ſay.

The Colonel inſiſts, he acted for the King.

The Colonel obſerved again, that he had acted for the King, and in his Name; that this was before the Regal Power was aboliſhed, and therefore he could not be ſaid to have committed Treaſon againſt the Parliament: That the Caſtle or Palace he held for the King, by Virtue of his Commiſſion, was demoliſhed before the Act for aboliſhing Kingly Power took Place: That it was ſtrange they ſhould aſſume a Power their Predeceſſors never exerciſed; and that the putting him to Death, who was a Soldier, in this Manner, might be retaliated on their Friends: There might come a Turn of Times, and the Marquiſs of *Ormonde* had aſſured him, that whatever ſhould befal him, the like ſhould be returned on the Priſoners he had taken: That he was bound by his Allegiance to do what he had done if he had no Commiſſion; he knew no other Power but the King's he owed Allegiance to.

The Court anſwered, this was not much to the Purpoſe: The Colonel replied, that it was true, ſince they had rejected the Authority he acted by, he might as well have held his Tongue, were it not for the Satisfaction of the Hearers: They might do by him, as they had done by his dear Lord *Strafford*, put him to Death without Law, and then make an Act it ſhould be no Precedent. Then he inſiſted on the Statute of 11 *Hen.* VII. which declares, that whoever ſhall aid or aſſiſt the King in his Wars, ſhall not be queſtioned for it.

He pleads the Stat 11. Hen. 7.

The Court anſwered, *Henry* VII. was a Uſurper, and made that Act for his own Security: To which the Colonel replied, as it was never repealed, he ought to have the Benefit of it; but the Rebel Judges would hear no more, and ordered the Colonel to be laid in Irons.

The Court orders him to be loaded with Irons.

The Colonel ſaid this was a Diſgrace to him, and to all Soldiers, and deſired they would not uſe him and his Fellow-Soldiers, who were Priſoners, thus ignominiouſly; for it would trouble him more than the Loſs of his Life: But notwithſtanding the Colonel was extremely importunate that he might not be laid in Irons, they put Irons both on his Hands and Legs before he was removed from the Bar, and even before the Verdict was brought in againſt him. Then the Court adjourned, and being aſſembled again in the Afternoon, the Jury gave in their Verdict, That the Colonel was GUILTY, as they did alſo againſt *Blackſtone*, or *Blackburne*, another brave Royaliſt in the like Circumſtances.

The Jury found him Guilty.

When the Court had pronounced Sentence againſt the Colonel as a Traitor, he ſaid, If I muſt ſuffer, I receive it with all Alacrity and Chearfulneſs, and I thank God, I ſhall die for a good

He bravely aſſerts the Royal Cauſe.

1649. 1 Car. II.

a good Cauſe, and the Teſtimony of a good Conſcience; for which, had I as many Lives as there are Stars in the Firmament, I would ſacrifice them all for the ſame. I beſeech God bleſs King *Charles*, and fight for all thoſe that fight for him, or have fought for him.

There was ſome Application made, even by the Officers of the Rebels Army, to ſave the Colonel, as he was a Priſoner of War: But he was too brave a Man and too loyal to his Prince, to be ſuffered to live by thoſe Uſurpers.

The twenty third of *Auguſt* being appointed for the Colonel's Execution, when he was brought out of Priſon, and ſaw the Sledge, he ſaid, I am as willing to go to my Death, as put off my Cloaths and go to Bed: Being drawn to the Place of Execution, he declared he was brought up in the true Proteſtant Religion, and had his Education in the Houſe of his dear Lord and Maſter the Earl of *Strafford*, one of the beſt-governed Houſes in the Kingdom: And as he had been bred up in, and hitherto profeſſed the Proteſtant Religion, without wavering, he was now reſolved, by God's Aſſiſtance, to die in it.

His Speech and Behaviour at his Execution.

Then he proceeded, and ſaid, Theſe Pains are nothing, if compared to thoſe Dolours and Pains, which Chriſt our Saviour ſuffered for us, when in a bloody Sweat he endured the Wrath of God, the Pains of Hell, and the curſed and ſhameful Death due to our Sins; I praiſe God, I am not plagued with a far more grievous Puniſhment: The like hath befallen others, who undoubtedly are moſt glorious and bleſſed Saints with Chriſt in Heaven. It is the Lord's doing; and who will not take any Affliction in good Part, when it comes from the Hands of God? *Shall we receive Good from the Hands of God, and ſhall we not receive Evil?* Though I deſire, as I am carnal, *that this Cup may paſs from me, yet not my Will, but thine be done.*

I bleſs God, that I am thought worthy to ſuffer in ſo good a Cauſe: If I had a Thouſand Lives I would willingly lay them down for the King, the Lords anointed. The Scripture commands us to *fear God, and honour the King; to be ſubject to every Ordinance of Man for the Lord's Sake, whether to the King as Supreme, or to thoſe that are in Authority under him.* I pray God to turn the Hearts of all the Soldiers to their Lawful Sovereign, that this Land may enjoy Peace, which till then it will never do.

After which he took his Bible, and read ſeveral Paſſages, ſuitable to his Condition, out of the *Pſalms*, and having finiſhed his Devotions, the Executioner did his Office.

Remarks Hiſtorical and Critical on Morris's *Trial.*

This brave Royaliſt Colonel *Morris* ſurprized *Pontefract* Caſtle for the King, on the Second of *June* 1648, and for this Service, had the Government of it conferred upon him: Here he kept the whole Country in Subjection, for twenty Miles round and more, and became exceeding terrible to the Adherents of the Uſurpers in *Yorkſhire:* Whereupon Forces were drawn together, to inveſt the Place; and in the Beginning of *October* 1648, *Rainsborough*, one of the Rebel Chiefs, was ſent down to command the Siege: *Morris* having Intelligence thereof, either marched in Perſon, or ſent a Detachment of his Garriſon, to beat up his Quarters at *Doncaſter*, and take him Priſoner if poſſible; and they were ſo fortunate, as to ſurprize *Rainsborough* in his Lodgings: But he making a Reſiſtance, and ſome Forces drawing together to reſcue him, *Rainsborough* was killed in the Action, but the Party from *Pontefract* returned to the Caſtle, with little or no Loſs. 1649. 1 Car. II.

Cromwell returning from *Scotland* with his Army about this Time, his *Yorkſhire* Friends begged of him to reduce the Caſtle of *Pontefract*, which continued ſuch a Terror to them; but he being engaged in greater Matters at that Time, namely, the breaking of the Treaty at the *Iſle of Wight*, and bringing the King himſelf to the Block, was obliged to continue his March to *London:* However, he left a Detachment of the Army, under the Command of General *Lambert*, to re-inforce the Siege. The Garriſon held out notwithſtanding, ſix Months longer; but being reduced then to the laſt Extremity, and finding it impoſſible to hold out many Days more, they capitulated the latter End of *March* 1649, when they were forced to ſubmit to the following hard Conditions; namely, that the Governor *Morris*, and five more Officers of the Garriſon, whom *Cromwell*, according to the Noble Hiſtorian, was reſolved to ſacrifice to the *Manes* of *Rainsborough*, ſhould be excepted out of the Capitulation, and left to their Mercy, if the ſaid proſcribed Men could not make their Eſcape within the ſix Days limited for delivering up the Place; four of whom actually got off in two deſperate Sallies the Garriſon made, and the other two were ſo well concealed under ſome Stones and Rubbiſh in the Caſtle, where Proviſions were left them to ſubſiſt on for a Month, that they were never diſcovered by the Enemy; and they made their Eſcape within ten Days after the Rebels became Maſters of the Place, the Caſtle being immediately demoliſhed and abandoned: However, Colonel *Morris*, with Mr. *Beaumont*, Chaplain to the Garriſon, and Colonel *Blackburne* were afterwards taken, tried, condemned, and executed by the Uſurpers, in a pretended Court of Juſtice, for High Treaſon, in making War againſt King *Charles* I. by whoſe Authority they had acted, as Colonel *Morris* inſiſted at his Trial. The Uſurpers would not put them to Death by Martial Law, for which they might have had ſome Pretence, as being excepted out of the Capitulation at *Pontefract*; but choſe to bring them before their Courts of Law, that, in condemning them, they might ſhew they adjudged all thoſe to be guilty of High-Treaſon, who had ſerved the King, and oppoſed the Parliament; thus making the King himſelf, and his loyal Subjects, Traitors to the People; and ſince they had already taken upon them, to condemn and execute their Sovereign, under Colour of Law, no Wonder his faithful Servants found no better Quarter at their Hands, eſpecially one who had ſo long oppoſed their whole united Power, after all other Forces and Places had ſurrendered, and *Scotland* was ſubdued. The Uſurpers would have done themſelves too much Honour, had they ſaved the Life of ſo brave

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brave a Cavalier, whoſe Fame will never die, any more than the Infamy of thoſe Men that put him to Death in cold Blood, in Defiance of all Laws, civil and military, and againſt the Laws of Nature and of Nations.

Thoſe pretended Patriots, who formerly railed at the Adminiſtration, for not allowing their Fellow-Subjects the Benefit of the Law, here denied the Colonel the Benefit of his Challenges, and impanelled his Enemies againſt him: They murdered him for making War againſt the King, when he fought for him, and by his Commiſſion; and when he cited that Act of Parliament of King *Henry* VII. which indemnifies every Man that takes up Arms, for the King, they ſlighted the Statute; though we find the Rebels and Regicides themſelves, ſome few Years after, endeavouring to skreen themſelves from Juſtice, under the very ſame Act; and urging that, as they acted under the Powers in Being, the ſaid Statute ought in Equity to be extended to them; inaſmuch as the Uſurpers had the Power of a King, though not the Name: But with how ill a Grace they pleaded this Statute, when they had denied the Benefit of it to thoſe who had actually fought for the King, will be obſerved hereafter, in the Trials of the Regicides.

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The Trial of Lieutenant Colonel JOHN LILBURNE, by Commiſſion of *Oyer* and *Terminer*, at *Guildhall*, *London*, for *High-Treaſon*, the 24*th*, 25*th* and 26*th* of *October*, 1649. 1 *Car.* II.

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Lilburn's *Trial.*

The Objections to the Juriſdiction of the Court, &c.

THE Priſoner being brought to the Bar, before he was arraigned, deſired to be heard; which being granted him, he objected to his being tried by a ſpecial Commiſſion of *Oyer* and *Terminer*: He complained of his being apprehended by a Detachment of Soldiers, and not by the Civil Magiſtrate; that his Chamber and Pockets had been ſearched, and his Eſtate, to the Value of three thouſand Pounds, ſeized without legal Proceſs; and of his being committed to the Tower, and no Allowance made him, as other Priſoners uſed to have, who were confined there: He demanded alſo to hear the Commiſſion read, by which the Court was held; which he thought not agreeable to the Petition of Right, and the reſt of the good old Laws of *England*.

Anſwers to his Objections.

To this, Mr. *Prideaux* the Attorney General anſwered, That this was not a Special, but a General Commiſſion of *Oyer* and *Terminer* in the uſual Form; that it had been read before he came, and that the Bill had been found againſt him by the Grand Inqueſt.

Judge *Jermin* alſo informed him, That the Court was conſtituted by the ſupreme Authority of *England*; that their Commiſſion was founded on the Statute of 1 *Weſtm.* 2. which the Barons obtained in their Wars, and purchaſed by the Sword, for the Liberties and Privileges of the Subject: That he was to anſwer the Charge of oppoſing the ſupreme Power, now ſettled in the Houſe of Commons, not newly erected but revived; for it was ſo in the *Saxon*, and in the *Roman* Times; requiring the Priſoner to put himſelf upon his Trial, and hold up his Hand at the Bar.

The ſupreme Power ſaid to be originally in the Commons.

His Reply.

Lilburne replied, He had good Reaſons to believe their Commiſſion to be illegal, and deſired all the good People preſent, to take notice, that they refuſed the reading the Commiſſion, by which they went about to take away his Life; nor did he know the Meaning of holding up his Hand: He looked upon it to be a tickliſh Point; he might throw away his Life, if he held it up, before he knew what it meant.

To which Judge *Keble*, anſwered, It was to ſignify he was the Perſon they enquired for, and if he did but own himſelf to be *John Lilburne*, it ſhould be ſufficient.

Then *Lilburne* ſaid, *His Name was* John Lilburne, *Son to Mr.* Richard Lilburne *of* Durham; *a Freeman of* London, *and late Lieutenant Colonel in the Parliament's Army*; but deſired they would not ſurprize him with Punctilios.

The Court told him, if he talked of Punctilios, they would put a Stop to that Language. *Lilburne* replied, *Give me Leave to ſpeak, or knock me on the Head where I ſtand.* Mr. *Bradſhaw*, Preſident of the High Court of Juſtice, as it was called, gave Duke *Hamilton* Leave to ſpeak to the Punctilios of Law; and I hope you will grant me, that have been in Arms for you, as much Favour, as was granted to Duke *Hamilton*, who was againſt you.

Then the Clerk arraigning him, and demanding if he was *Guilty*, or *Not guilty*, *Lilburne* ſaid, he was not to anſwer Queſtions for or againſt himſelf; he did not know what Benefits he might loſe by anſwering, and therefore deſired a Copy of his Indictment, Counſel, and Time to conſult them; and that he might not be entrapped with Niceties, and Forms of Law, that could not be found in *Engliſh* Books. However, he was at length prevailed on to plead, *Not guilty of the Treaſons in Manner and Form, as laid in the Indictment:* And being asked how he would be tried? he anſwered, By the known Laws of *England*, and a legal Jury of his Equals, And *in the Preſence of that God, who knew if the Court were poſſeſſed with premeditated Malice, to deſtroy him right or wrong:* And having repeated his Demand for Counſel, and a Copy of his Indictment, he was told, he could not have either: *Lilburne* replied, He deſired no other Privilege of them, the Nations pretended Friends, than he had at *Oxford* from its pretended Enemies, when he was tried before Chief Juſtice *Heath*, for Treaſon and Rebellion againſt the King. If they, for whom he fought, would not be as juſt to him, as the Cavaliers againſt whom he

He is prevailed on to plead, with ſome Difficulty.

Demands Counſel, and a Copy of his Indictment.

1649. 1 Car. II.

he fought, he was reſolved to ſtand there, and die upon the Principles of a true *Engliſhman*: So they might murder him, and take his Blood if they pleaſed.

Says, the Cavaliers allowed him Counſel.

Was it juſt to allow Counſel to plead for an Eſtate, and deny him Counſel in a Caſe of Life? And when Judges were ſeven Years ending a Suit for Money or Land, would they deny him a few Days, to prepare for his Defence? Theſe were pretended to be arbitrary and tyrannical Prerogatives of the King's; but if they were not taken away, by thoſe who took away his Life, then only the Name was gone, but the Tyranny remained. Judge *Heath* had allowed him Council in the Higheſt Treaſon, even the levying War againſt the King, and fighting his Forces at the Sword's Point.

To which the Court anſwered, Judge *Heath* knew that was no Treaſon; he acted by the Parliament's ſpecial Authority; he had their Commiſſion to juſtify him.

Lilburne replied, *The Letter of the Law was point-blank againſt him; and if the Cavaliers had prevailed, both he and they might have been hanged, for all their Parliament Commiſſions.*

The Charge againſt him.

The next Day, being the 26th of *October*, the Priſoner was brought into the Court again; when the Jury were called over; and *Lilburne* having challenged two or three of them, twelve were ſworn, and the Indictment was read: Which ſet forth, that the Priſoner intending to diſturb the Government, then *happily* eſtabliſhed, without King or Houſe of Lords, in the way of a Commonwealth and free State, and to bring them into Hatred and Contempt with the good People of *England*, had written and publiſhed ſeveral treaſonable Libels: The firſt entitled, *Salva Libertate.* 2. *An Impeachment of High Treaſon againſt* Oliver Cromwel, *and his Son-in-Law* Ireton, *late Members of the forcibly diſſolved Houſe of Commons.* 3. *A Hue and Cry after Sir* Arthur Haſelrig. 4. *An Outcry of the young Men and Apprentices of* London: *or, An Inquiſition after the loſt fundamental Laws and Liberties of* England, *directed to the Soldiers of the Army.* 5. *The legal fundamental Laws and Liberties of the People revived, aſſerted, and vindicated:* Declaring, that the preſent Government was tyrannical, uſurped, and unlawful; and that the Commons aſſembled in Parliament, were not the Supreme Authority of the Nation: and the following Paſſages were extracted out of the ſaid Libels, to prove the Treaſon, *viz.*

The obnoxious Paſſages produced as Proof of the Treaſon.

The People now ſee their Slavery and abſolute Bondage is like to encreaſe, under the preſent tyrannical, arbitrary, new erected, robbing Government.

The preſent Juncto *are no Parliament, according to Law or Reaſon, but a Company of uſurping Tyrants, and Deſtroyers of your Laws and Liberties.*

Moſt of our preſent Juncto, *and their new framed Council of State, muſt go to* Tyburn, *or* Tower Hill.

Your Officers have often ſtiled them no better than a Mock Parliament, A Shadow of a Parliament.

Miſery and Poverty were never ſo extreme, under the moſt tyrannical of our Kings, as under theſe pretended Friends. 1649. 1 Car. II.

Nothing but the groundleſs Wills of theſe Men of Blood, rageth and ruleth over us.

The preſent ſupreme Authority fought againſt both King and Parliament, rooted out all legal Magiſtracy, and left none but themſelves; and could be compared to none but Murderers and Robbers, having no more juſt Right than ſo many Algier *Pyrates.*

The King never acted the like Tyranny, and yet by St. Oliver's *Means loſt his Head; and* Oliver *and his Parliament have plucked up the Houſe of Lords by the Roots.*

They (The great Officers of the Army) *have had as much Power over their Parliament, now ſitting, as ever a School-maſter had over his Boys.*

The preſent Men in Power, have trod all Liberty under Foot, and ſet up their Tyranny by the Sword.

The High Court of Juſtice is unlawful, if thoſe who ſet it up were a legal Parliament, which they were not, but a Pack of traiterous tyrannical Uſurpers: And they being no Parliament, the other is no Court of Juſtice.

He tells the young Men, *They are obliged to exert themſelves, for their own and the Nations Advantage; and neither to addreſs or ſuffer the* TYRANTS IN POWER, *to be addreſſed or petitioned; but to chuſe ſome of the ableſt among themſelves, who would venture their Lives to oppoſe the preſent Uſurpers: Deſiring the Soldiers, if they had any Compaſſion for themſelves, or their Fellow Subjects, to aſſiſt in their* REDEMPTION FROM SLAVERY; *eſpecially thoſe, who ſigned the ſolemn Engagement: Adviſing them to chuſe two out of each Troop and Company, to correſpond and conſult with the ſaid young Men's Friends, for eſtabliſhing the Liberties and Freedom of the People.*

In another Place, he ſays, *That the young Men were reſolved, to incite their Fellow Apprentices of the Out-Pariſhes to chuſe Agents, and deſire by Letter each County in* England *to do the ſame; which Agents ſhould, with their* Burford *Friends, meet and conſider of the ſpeedieſt Method of chuſing a new Parliament, according to the ſaid Agreement; ſeeing* THE PRESENT PRETENDED PARLIAMENT ONLY SHARED THE PUBLICK TREASURE, AND MOST BENEFICIAL PLACES AMONG THEMSELVES, *without redreſſing Oppreſſions, or receiving Petitions or Complaints: For, notwithſtanding the many Oaths, Promiſes, and Engagements of the preſent Commonwealth, to maintain the Liberties and Properties of the People,* THEY WERE PERJURED TYRANTS, AND OUGHT TO BE ABHORRED OF ALL MEN.

That Cromwell *and his Confederates, were guilty of moſt of the Crimes in kind, charged againſt the late King, though under new Denominations.*

That no Promiſes could bind the chief Jugglers, and Leaders of the Army: And that he, (the Priſoner) *left their Council, eſteeming them a Pack of diſſembling Knaves, eſpecially* Ireton: And averred, *That the General, and chiefeſt*

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chiefeſt of his Council, dreaded a new and free Parliament more than the Day of Judgment: That neither Korah, Dathan, *and* Abiram *of Old, nor the* Anabaptiſts *with* John *of* Leyden, *and* Buperdullion *at* Munſter; *nor* Jack Straw *or* Wat Tyler *were comparable to the General and his Council, for Rebellions and Treaſons againſt all Kinds of Magiſtracy.*

He tells the Soldiers, *That they aſſiſted rather than endeavoured to ſuppreſs the Deſtroyers of the Liberties of the People: And if any one complained, his Houſe was immediately beſet with armed Janizaries, to take off the People's Courage, and prevent their maintaining their Freedoms.*

And the Indictment farther ſet forth, that, the ſaid *John Lilburne*, not being an Officer, Soldier, or Member of the Army, did traiterouſly endeavour to incite Mutiny and Rebellion in the Army, under General *Fairfax*; and particularly did endeavour to draw *Thomas Lewis*, *John Skinner*, and *John Toppe* from their Obedience to their Superior Officers; and did deliver to the aforeſaid three Soldiers the ſaid Books, containing the treaſonable Expreſſions aforeſaid, and which were written and publiſhed to the Intent to ſtir up, and raiſe Forces againſt the Commonwealth; and bring about an Alteration in the Government, in Contempt of the Laws, *&c.*

The Evidence of his printing and publiſhing the Books.

The Witneſſes, produced on Behalf of the Commonwealth, depoſed, That the Priſoner recommended the Books mentioned in the Indictment, and corrected one of the Sheets at the Printer's; and that he publiſhed them, by diſperſing them among the Soldiers: and endeavoured to incite, and ſtir up the Soldiers to Mutiny, againſt their ſuperior Officers and the Commonwealth.

An Ordinance of Parliament, which makes the oppoſing or reflecting on the Common-wealth Treaſon.

An Ordinance of Parliament of the 14th of *May* 1649, alſo was read; declaring, "That whereas the Parliament had aboliſhed "Kingly Government, and reſolved, that "the People ſhould be governed by their own "Repreſentatives; it was hereby enacted, "That whoever ſhould maliciouſly publiſh, "by writing, printing, *&c.* that the ſaid "Government was tyrannical, uſurped, or "unlawful, and not the Supreme Authority; "or, ſhould plot or endeavour to ſtir up, or "raiſe Forces againſt the preſent Government, for the Subverſion thereof, or a-"gainſt the Keepers of the Liberties of *Eng-*"*land*, or the Council of State, or any of "them, ſhould be deemed guilty of High "Treaſon: And that whoever (not being "an Officer, or Soldier) ſhould endeavour "to ſtir up any Mutiny in the Army, or "withdraw the Soldiers from their Obedi-"ence to their ſuperior Officers, or ſhould "invite Foreigners to invade the Kingdom, "or counterfeit the Great Seal, ſhould like-"wiſe be adjudged guilty of High Treaſon."

Lilburne's Defence.

Lilburne in his Defence inſiſted, That it was not proved he was the Author of the Books laid in the Indictment; but was anſwered, That, ſince it appeared he had diſperſed and publiſhed them, this made him guilty of High Treaſon.

Then he objected, that he was indicted for

Crimes committed againſt the Keepers of the Liberties of *England*, and one of them (Colonel *Purefoy*) was made an Evidence againſt him; but the Teſtimony of a Man that was a Party, ought not to be credited.

He obſerved, that a Priſoner ought to be tried in the County where the Treaſon was committed; and they had laid Facts in the Indictment, ſaid to be committed in three different Counties; and, that there was but one Witneſs to moſt of the particular Treaſons.

He ſaid he had ſtood five Hours waſting his Spirits already, and now to ſtand to anſwer a five Hours Charge *extempore*, was a Burthen too heavy for a Horſe; and hoped they did not deſign to hang him, becauſe he was tired, and had not Strength left to pronounce his Defence; and deſired a Week's Time, or at leaſt till the next Morning; but was told, he muſt enter upon his Defence immediately: Then he deſired he might withdraw an Hour to peruſe his Notes, and refreſh his Spirits: And this being alſo refuſed, he cried out, *Well, if you are reſolved to have my Blood, right or wrong, I appeal to the Lord God, Omnipotent, and a mighty Judge between you and me, to require and requite that Blood on you and your Poſterity, to the third and fourth Generation.* And a Scaffold falling down as he was ſpeaking, put the Court into ſome Conſternation. After which he ſaid, *If you will not allow me Liberty to withdraw and eaſe Nature, I deſire I may do it in Court?* Whereupon a Pot was brought him, and he was allowed ſome little Time to look over his Papers: But *Keble* one of his Judges, ſoon interrupted him; and ſaid, *Take away his Chair; the Court cannot wait his Motions: Speak what ye have to ſay.*

Lilburne anſwered, I deſire, to know whether, after I have pleaded to Matter of Fact, you will permit me to ſpeak to the Jury, on whoſe Integrity my Life depends; and, *who are Judges of Law, as well as Fact; and you only the Pronouncers of their Will: You, who call yourſelves Judges of the Law, are only* Norman *Intruders, Cyphers to pronounce their Sentence who are Judges of Law as well as Fact:* To which Judge *Jermin* anſwered, *Was ever ſuch damnable blaſphemous Hereſy, to call the Judges Cyphers: The Judges have been Judges of Law from the firſt Settlement of the Law of* England, *and the Jury only Judges of Fact.*

Lilburne replied, If you will permit me to read, I will diſprove this from your own Law: Here is the firſt Part of *Coke's* Inſtitutes, (holding the Book in his Hand) which all Lawyers allow to be good Law; and here *Coke* ſays, *That a ſpecial Verdict, or at large, may be given upon any Iſſue; but if they will take upon them the Knowledge of the Law, they may give their Verdict generally.*

Then he objected, That ſome of the Books laid in the Indictment, were publiſhed before the Act on which he was indicted took Place; and urged, That where there was no Law, there was no Tranſgreſſion: He obſerved farther, That it was the Intention, and not the Act, which made a Thing criminal; and he had always endeavoured the Proſperity of

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the Nation, he ſaid, though it was true he had been proclaimed a Traitor in all the great Towns in *England*, and impriſoned for Crimes with which he had never been charged ſince; and now, for complaining of hard Uſage, Acts were made on Purpoſe to bring him within a Charge of High Treaſon. The Court anſwered, this was nothing to the Purpoſe; they ſhould not ſuffer him to go on at this Rate: Whereupon *Lilburne* cried out, *Well, If you will not let me proceed, my Blood be upon your Heads:* I deſire the Jury will take Notice of your unjuſt and cruel Uſage: Then he repeated his Complaints, That his Eſtate was taken from him; That he was refuſed Council, *&c.* but reſigned himſelf to the Care and Conſciences of his Fellow Citizens, the honeſt Jury; who (he again obſerved) were Judges of the Law, as well as Fact; and prayed God to direct them, to act according to Juſtice: Whereupon the Audience cried *Amen*, and gave a great Hum; and the Judges being apprehenſive of a Tumult, directed Major General *Skippon* to ſend for three Companies of Soldiers more for their Protection.

The People ſhew themſelves well-affected to him, and the Court ſend for a ſtronger Guard.

Then *Prideaux*, their Attorney-General, ſummed up the Evidence, and informed the Jury, that two Witneſſes were not neceſſary to convict the Priſoner of Treaſon; for the Statute of 1 and 2 *P. M.* had repealed the Statutes of *Edw.* VI. Then he made an Encomium on the Officers of that gallant Army, who had been ſo faithful to their Truſt, and had ſo much advanced the Peace and Happineſs of the Nation, obſerving, *That God had bleſſed and owned them in a miraculous Manner.* But *Lilburne* interrupted the Attorney, and obſerved, that he (the Attorney) was once one of thoſe that voted the Army Traitors, and was ſet down as a Malignant by the Commiſſioners of the Army, though he was now become a good acquieſcing Creature; and demanded, if, notwithſtanding their boaſted Faithfulneſs, the Army had not twice rebelled againſt their Creators, their Lords and Maſters.

The Army govern the Parliament at this Time. Mr. Attorney applauds the Army.

However, Mr. Attorney went on ſhewing what great Things the Army had done, though they could not, he ſaid, eſcape the vile Tongue and Pen of Mr. *Lilburne*, any more than the Parliament and Civil Magiſtrate; and therefore, he hoped the Jury, as they tendered the Honour and Welfare of them all, and if they had any Remembrance of the great and wonderful Things their renowned Army had done, and with what Confidence and Deſpite to all Law and Authority *Lilburne* had publiſhed thoſe Books, they would take Care he ſhould ſmart for it; concluding, that the Court were Judges of the Law, as the Jury were of the Fact. Judge *Keble* alſo, in his Directions to the Jury, told them that the Statutes of *Edw.* VI. which required two Witneſſes, were repealed by that of Queen *Mary*, which enacted, that the Common Law ſhould be the Rule in Trials of Treaſon; and, by the Common Law, one Witneſs with concurring Circumſtances, was ſufficient; that he did not obſerve: That any Fact the Priſoner was charged with ſtood upon a ſingle Teſtimony, but was ſupported by many aggravating Circumſtances; and that this was the greateſt Treaſon that ever was attempted by one Man; that it ſtruck at the Subverſion of the Commonwealth, and to have laid them all in Blood; and left it to their Conſciences, if he was not guilty of the moſt tranſcendent Treaſon, that ever was hatched in *England*.

Judge Keble affirms, two Witneſſes were not neceſſary in Treaſon.

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The Jury, before they went out, deſired they might have a Quart of Sack, to refreſh themſelves, but were told, No Jury were ever allowed to drink in Capital Caſes, and it was thought a great Indulgence that they were permitted to have a Candle. The Jury, returning into Court about an Hour afterwards, gave in their Verdict, that the Priſoner was NOT GUILTY; at which the People ſhouted for half an Hour, without ceaſing. But, notwithſtanding Mr. *Lilburne* was acquitted, he was remanded to the *Tower*, and Major-General *Skippon* ordered to guard him thither, with a good Body of Troops; however, the Multitude followed him, with loud Acclamations, to the *Tower* Gates, and abundance of Bonfires were made in the Streets that Night; and the People afterwards appeared ſo exaſperated at *Lilburne*'s being continued a Priſoner, that the Council of State, on the 8th of *November*, thought fit to direct their Warrant to the Lieutenant of the *Tower* to diſcharge him.

Wine denied the Jury.

Lilburne acquitted.

The People ſhout, and make Bonfires.

Cromwell appears to have been under great Apprehenſions from the daring Spirit of this Man, and could not reſt till he got an Ordinance paſſed for his Baniſhment; whereby it was declared, that he ſhould be adjudged guilty of Felony, if ever he appeared in *England* after a certain limited Time: But neither was this much regarded by *Lilburne*; he was afterwards found in *England*, and brought to his Trial, at the *Old-Baily* on that Act, the 20th of *Auguſt*, 1653. but again acquitted by the Jury; at which the Parliament were ſo incenſed, that that they ordered the Jurors to be apprehended, and brought before the Council of State, to ſhew Cauſe why they acquitted the Priſoner of Felony, againſt the plaineſt Evidence: And, though all the Jury was ſeparately examined and threatned, they would give no other Anſwer, but that they looked upon themſelves to be Judges of the Law as well as the Fact; that they gave the Verdict according to their Conſciences: As to the Reaſons that induced them to acquit him, they would give none. Nor had *Cromwell* any way to defend his Uſurpation againſt the Attacks of this brave and popular Man, but by impriſoning him arbitrarily in *Dover-Caſtle*, where he died a Sort of a Martyr to Liberty.

An Ordinance for the Baniſhment of Lilburne.

He is tried for remaining in England, *and acquitted.*

The Jury threatned.

Lilburne impriſoned in Dover-Caſtle, *dies there.*

The Trial of Mr. *Lilburne* gives us a very lively Idea of the Condition of the Subjects of *England* during the Uſurpation, and ſhews, that Tyranny and arbitrary Power were far from being baniſhed the Realm, on the aboliſhing of Kingly Government; or rather, that thoſe Men who rebelled againſt their King, and murdered him on the Pretence of Tyranny and Mal-adminiſtration, were ten times more arbitrary and deſpotick than the King had been, and entirely ſubverted that Conſtitution and thoſe Laws they pretended to be ſo zealous to preſerve, proſecuting ſuch Men with the utmoſt Violence as complained of their Oppreſſions.

Remarks on the Trial of John Lilburne.

Lilburne

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Lilburne informs us, the People were reduced to the utmoſt Slavery and Bondage, by a Company of uſurping Tyrants and Deſtroyers of their Laws and Liberties; that Miſery and Poverty were never ſo extreme, under the moſt tyrannical of our Kings, as under theſe pretended Friends to the Conſtitution; that they had trod all Liberty under Foot, and ſet up their Tyranny by the Sword: That *Cromwell* and his Aſſociates were guilty of the very Crimes they charged the late Adminiſtration with; that no Promiſes could bind them; they were a Pack of diſſembling Knaves; that the arbitrary Wills of theſe Men of Blood raged and ruled over all, and they were no better than Murderers and Robbers.

In this Situation of Affairs, the Priſoner had little Reaſon to expect the Benefit or Protection of the Laws; the ſeizing his Eſtate, the Impriſonment of his Perſon, and the reſt of the Outrages he complains of, were but the natural Effects of the Tyranny the Uſurpers exerciſed; and how they came to indulge him a Trial by a Jury, is not eaſy to conceive, unleſs they looked upon this as the moſt popular Way of cutting him off, and depended on the Sheriffs returning ſuch a Jury, as would have anſwered their Ends.

Their affirming that the Jury were not Judges of the Law as well as Fact; that two Witneſſes were not neceſſary in Treaſon, and denying him Council to argue the Points of Law, were but trivial Injuries, compared with others they daily committed; with their rooting up and ſubverting the very Foundations of the Government, and ruling the Nation with a Military Force. 1649. 1 Car. II.

We find even *John Lilburne*, and all the Parliamentarians, who had been ſo zealous in deſtroying Kingly Government, now repenting their Raſhneſs, and wiſhing for a Reſtoration; even *Cromwell* and his Army could not awe them into Silence. The People looked upon *Lilburne* as the Champion of their Liberties; and ſo general was the Diſaffection, that the Uſurpers were not able to get a Jury to convict him, though they made Ordinances of Parliament on Purpoſe to deſtroy him. And it is evident, if the People had not been kept in Bondage by an Army of Veteran Troops, to whom *Cromwell*, their Chief, in a manner gave the Plunder of the Nation, King *Charles* II. had been reſtored to his Throne within leſs than a Year after his Father's Murder. The People ſoon ſaw through the Hypocriſy of thoſe pretended Saints, and that, inſtead of vindicating their Liberties and Properties, the Uſurpers intended only to eſtabliſh their Tyranny, and bring them under a more intolerable Yoke than any People in *Europe* were ſubject to: And this we find they did *in the Name of the Lord*, and in the Name of a *Parliament*, an Aſſembly of Men of their own appointing, with whom they ſhared the Spoils of the Kingdom.

1650. 2 Car. II. Andrewe's Trial.

The Trial of Colonel EUSEBIUS ANDREWE, a Barriſter of *Gray's-Inn*, for *High-Treaſon, againſt the Rump Parliament*, before their pretended *High Court of Juſtice*, 16 *Aug.* 1650. 2 *Car.* II.

1650. 2 Car. II.

The Charge.

THE Editors of this Trial have not given us the Articles, or Charge, exhibited in the pretended High Court of Juſtice, againſt the Colonel: But from his Anſwers and Defence, it appears, he was charged with a Conſpiracy to ſubvert their (uſurped) Government; and the Overt-Acts laid of it, were his correſponding with King *Charles* II. endeavouring to bring him in; and, in order to it, conſpiring with Sir *John Gell* and others, to raiſe Forces; to ſeize upon the Iſle of *Ely*, and taking an Oath of Secrecy not to reveal the Conſpiracy.

The Colonel was apprehended at an Inn in *Graveſend*, the 24th of *March* 1649-50, and examined by Preſident *Bradſhaw*, Sir *Henry Mildmay*, and *Thomas Scot*, Members of their Council of State, and delegated to take his Examination.

Mr. *Buckley*, who publiſhed the Account of theſe Proceedings againſt his Friend Colonel *Andrewe*, ſays, the Colonel found, by the Queſtions that were put to him, that he was betrayed, and that his Examiners were acquainted with every Circumſtance of the Conſpiracy, and therefore endeavoured to merit their Favour, by freely confeſſing what he found it was impoſſible to conceal.

His Examination.

In his Examination therefore, taken the 27th of *March* 1650, he confeſſed, that he had been unfortunately and treacherouſly ſeduced into an Action that rendered him obnoxious to their Diſpleaſure: He acknowledged, that he took up Arms for his late Majeſty King *Charles* I. in the Year 1642, and continued in his Service till the Surrender of *Worceſter*, in *July* 1645. That he had omitted to make his Compoſition with the State: That he had neither taken the Proteſtation required by the preſent Powers, the ſolemn League and Covenant, the Negative Oath, or the Engagement.

He confeſſed, That Mr. *John Barnard*, who was his Major, when he commanded a Regiment in the King's Service, had communicated to him the Schemes of ſome Reformades, Levellers, Agitators, and other Perſons diſaffected to the preſent Powers; but that he neither promoted, or conſented to them: That one *John Benſon*, who pretended to have ſerved in the Parliament Army under Sir *John Gell*, had ſhewn him alſo ſome Papers relating to Affairs of State, which he ſaid were intended to be ſent beyond Sea: And that both *Benſon* and Captain *Holmes*, who introduced him to the Examinant, magnified Sir *John Gell*'s Intereſt in his Country; ſaid he was inclined to join the Royal Party; that he ſerved the Parliament with Reluctance, and was willing to expiate his former Fault, by ſome beneficial Service for the King (*Charles* II.)

That

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That Major *Barnard* propoſed the reſuming a Deſign the Examinant had formed, during the War, of ſeizing the Iſle of *Ely*, with the Aſſiſtance of Sir *John Gell*, *Holmes*, and *Benſon*, and it was reſolved, that the Examinant and *Benſon* ſhould try if the People of *Cambridgeſhire* would engage in it, and if Sir *John Gell*'s Reſolution and Strength were ſuch as had been repreſented.

That he afterwards diſcourſed with Sir *John Gell*, who ſhewed he was diſatisfied his Arrears were not paid, and that his Services for the Parliament were not requited; and intimated that, if ever he took up Arms again, it ſhould be for the Prince, deſiring that his Affection for the Royal Cauſe might be repreſented to him.

However, the Time for the Examinant's remaining in *England* (according to an Order of State, for baniſhing ſuch *Cavaliers* as did not comply with them) being expired, he was preparing to go over to *New England* or *Virginia*; when Major *Barnard* and *Benſon* came to him again, and told him, there was a Deſign laid, on the *Cavaliers* leaving the Town, to ſeize the Cavalry in the Service of the preſent Powers in their Quarters: That the Examinant was pitched upon to go over to *Holland*, to concert Matters with the Prince, and Money was raiſed to defray his Expences; and that he (the Colonel) anſwered, If the Money was ready, he would lay aſide his Deſign of going to the Plantations, and entertain the Motion.

That, a few Days after, Major *Barnard* and *Benſon* came to the Examinant again, and informed him, that ſeveral Perſons of Quality and Fortune, in *Kent*, *Buckinghamſhire*, and *Dorſetſhire*, would preſently come up near the Town, join in an Engagement to proſecute the Deſign, and advance Money for it; and deſired him to draw up an Engagement, which he did on the Inſtructions they gave him; and that they preſſed him to bring Sir *John Gell* into it, but propoſing it to Sir *John* the ſame Day, he anſwered, he was in no Capacity to enter upon ſuch an Attempt at preſent, neither would he come into any Engagement under his Hand and Seal to act for the Future, for that *Benſon*, was given to drink, and laviſh of his Tongue; but entruſted the Examinant ſo far as to tell him, if he went to *Holland* upon this Occaſion, he ſhould poſſeſs the Prince with a good Opinion of him, let him know that he would do nothing againſt him, and if he (Sir *John*) were in Command, he would be ſo to the Prince's Advantage.

That giving Sir *John*'s Anſwer to Major *Barnard* and *Benſon* they did not ſeem to be diſſatisfied with it, but ſaid, they had appointed a Deputation of Gentlemen, from the Counties of *Kent*, *Buckingham*, and *Dorſet*, to meet at the *Three Cranes* at the *Savoy-Gate*, and agree on their reſpective Proportions of Money, deſiring the Examinant to be there, who came accordingly, but no Gentlemen from the ſaid three Counties appeared; only Major *Barnard* produced two Letters, ſubſcribed by *Smith* and *Thatcher*, importing that the *Kentiſh* Gentlemen were come as far as *Rocheſter*, and would be within twelve Miles of *London* that Night, and would give them a Meeting any where near *London* the Day following, deſiring Major *Barnard* might come to them forthwith, who pretended to take Horſe accordingly, and go into *Kent*: That the ſame Night, one *Smith* and Captain *Aſhley* brought the Examinant a Letter from *Barnard*, reprehending him and Sir *John Gell* for their Backwardneſs in ſigning the Engagement, and declaring, that unleſs the Engagement was ſigned by Sir *John Gell*, his *Kentiſh* Friends would not proceed further: To which the Examinant anſwered, under a Vow of Secrecy, that he was ſatisfied concerning Sir *John Gell*, and if any Gentleman of Quality, in whoſe Judgment the reſt would abide, would addreſs to Sir *John*, he would ſatisfy him under an Oath of Secrecy; but that he durſt not truſt *Benſon*, and *Barnard* was a Stranger to him: That Captain *Aſhley* and *Benſon* thereupon took their Leaves, aſſuring the Examinant, that they thought no more would be expected from Sir *John*; they would return to their Company that Night, and the next Day, being *Tueſday*, the Money ſhould be paid at the *Palſgrave's-Head*.

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They broke their Word, however, as to the Payment of the Money; and the next Night Captain *Aſhley* and *Benſon* delivered the Examinant a Letter, from Major *Barnard*, preſſing him to ſign the Engagement; upon which Condition, *Barnard* ſaid, he would go with him the next Day to *Graveſend*, where they ſhould meet the Gentlemen of *Kent*, and the Money ſhould be paid him: But that, having ſigned the Engagement, and going to *Graveſend* the ſame Night, he found no Gentlemen there, and having waited, in Expectation of ſeeing them, till *Monday* the 24th of *March*, he was ſeized at *Graveſend* by a Party of Horſe, and brought to *London*.

The Colonel diſcovers he had been betrayed.

The Colonel, at his Examinations before the Committee of the Council of State, obſerved, That there had been Spies ſet upon him for ſeveral Years, and particularly Major *Barnard*, which the Preſident did not deny: On the contrary, he took upon him to juſtify the Parliament, by the Practice of all States to ſet a Watch upon ſuch Perſons as they knew to be diſaffected to them.

He petitions for his Enlargement.

The Colonel afterwards ſent ſeveral Petitions to the Council of State, importing, that ſince he had not prevaricated with them, or concealed any Thing or Perſon from them, that might give *their Lordſhips* Satisfaction, or ſerve the State, he might have the Liberty of the *Tower*, and his Friends might viſit him.

To be brought to his Trial.

He petitioned alſo, that he might not be tried before the High Court of Juſtice; but afterwards he petitioned to be brought to a ſpeedy Trial, repreſenting, that he muſt otherwiſe infallibly periſh in the *Tower*, all Perſons being prohibited to come at him, or relieve his Neceſſities; but receiving no Anſwer from the Council of State, he drew up a Petition to the Parliament, wherein he ſets forth, that he had been betrayed by a Pack of Setters into Actions, which abſtracted from

He petitions the Parliament to be releaſed, &c.

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from their Circumſtances rendered him liable to their Juſtice; and this had been done in Hopes that he would have drawn in divers Perſons of Quality and Fortune into the ſame Danger.

That, failing in that Part of their Deſign, they had betrayed the Petitioner to the Council of State, by whoſe Warrant he had been ſixteen Weeks a cloſe Priſoner, without the Acceſs of his Friends, or Means to ſubſiſt on; and was like to periſh by his Wants, before it was known by a publick Trial, whether he was an Object of their Juſtice or Mercy; and by this cloſe Reſtraint was deprived of all Means of making his Defence.

He humbly deſired therefore, 1. That they would admit him to ſue out his Pardon, on giving Security for his good Behaviour; and, 2. If that was too great a Favour, grant him Licence to depart the Commonwealth; but, 3. If that was not permitted, that he might receive a publick Trial, and have an Opportunity of preparing for his Defence; and, 4. That he might have the Liberty of the *Tower*, be permitted to ſee his Friends, and that the Debt he had contracted by his Impriſonment might be diſcharged.

He is brought before the High Court of Juſtice.

To this Petition I do not find he received any Anſwer, but in *Auguſt* he was brought before the High Court of Juſtice: The Charge was opened and aggravated by their Attorney-General *Prideaux*, who gave the Colonel very abuſive Language; however, he was allowed to put in his Anſwer in Writing, which he did on the 16th of *Auguſt*, containing in Effect, a Plea to the Juriſdiction of the Court; for he inſiſted, that the Ordinance for eſtabliſhing a High Court of Juſtice, being contrary to *Magna Charta*, and the Fundamental Laws of the Kingdom, by which every Man ought to be tried by his Peers, was void.

Pleads to their Juriſdiction.

That this very Parliament had, by ſeveral Remonſtrances, declared, that the Preſervation of the Laws, and the due Adminiſtration of Juſtice, were their Juſtification in taking up Arms againſt the King, and the Ends they propoſed by the War; and had imprecated God's Curſe on all that ſhould decline thoſe Ends: That by the Ordinance, or Votes of Non-Addreſſes, *January* 1648. they aſſured the Kingdom, that, though they had laid the King aſide, they would govern by the Laws, and not interrupt the Courſe of Juſtice *in the ordinary Courts*. -----The Conſtitution of the High Court of Juſtice therefore was a Breach of that publick Faith of the Parliament, exhibited and pledged in their Declarations and Votes to the Freemen of *England*.

He did inſiſt therefore, and affirm for Law, and claim as his Right, 1. That the Act being defective by which this Court was conſtituted, they had no Power over him, or to preſs him to a further Anſwer. 2. That by Virtue of *Magna Charta*, the Petition of Right, the ſaid Remonſtrances and Declarations of Parliament, he ought not to be proceeded againſt by this Court but in an ordinary Court of Juſtice, and be tried by his Peers.

He alſo put in a ſecond and third Anſwer, importing, That though the Court was legally conſtituted, yet they were no more than Commiſſioners of *Oyer and Terminer*, and ought to try him by a Jury; and at his Hearing repeated and enforced all that he had inſiſted on in his ſeveral Anſwers.

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Inſiſts that by Magna Charta *he ought to be tried by his Peers.*

In his Arguments at the Bar, he obſerves, that *Magna Charta* was but a Confirmation, or Reſtitution of the Common Law; that it had been thirty Times confirmed; that *Hubert de Burgh*, in the Reign of *Henry* III. was condemned for endeavouring a Reverſal of it; and *Hugh Spencer*, in the Reign of *Edward* II. for adviſing the making a Breach in it; and in the Reign of *Edward* III. it was enacted, That if any Statute ſhould be made contrary to it, it ſhould be void.

And by this Great Charter it was granted, *That no Freeman ſhould be taken, impriſoned, or condemned, but by lawful Judgment of his Peers.*

That the Ordinance for eſtabliſhing the High Court of Juſtice, being diametrically oppoſite to the Great Charter, was of no Force; but as the Makers of this Law were armed with Power, he confeſſed he was not in a Condition to diſpute it with them, and therefore proceeds to his ſecond Argument:

Wherein he ſhews, that their Commiſſion reſembled that in the Reign of King *Charles* I. which iſſued for the Trial of the Subject by a Court Marſhal, againſt which the Petition of Right was particularly levelled; and it was granted there ſhould never be any ſuch for the future. 2. He obſerved that, though they were called Commiſſioners by the Act, they had no Commiſſion but the Act itſelf; whereas, in regard they were not a Court of Record, they ought to have had Commiſſions, returnable at a certain Day in ſome Court of Record, where their Proceedings might be extant and viſible; and if the Act gave them a Power to condemn and execute him, yet, he obſerved, they had none to acquit and releaſe him; ſo that if they did not kill him by the Sword of Juſtice, he muſt be left in worſe Hands, to be buried alive in Reſtraint and Want, which was againſt the Law of Nature and Nations, and particularly againſt the Laws of this Land.

But if they ſhould be granted to be a Court, They muſt acknowledge they were a Court *ex parte*, ſet up to ſerve a particular Purpoſe, to deprive the Subjects of their Lives and Liberties, by Ways unknown to our Laws; that as they had a Power over the Lives and Lands of the Subject, it was abſolutely neceſſary they ſhould be a Court of Record, that the State might know what was become of the Matter in Iſſue, and of the Perſon put upon his Trial; and that the Subject, if he was acquitted, might at all Times reſort to the Record, if he ſhould be queſtioned again for the ſame Fact in any other Court.

Another Exception he made to the Act was, that it was made for the Puniſhment of Perſons that had committed certain Facts before the Act was made, and who could not have been puniſhed by any Law in being at the Time of the Fact committed; and that it was not correcting the Fault, but the Deſtruction of the Perſon, which was manifeſtly de-

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ſigned by ſuch Clauſes of Retroſpection, as it appeared in the Lord *Strafford*'s Caſe; and he begged leave to ſay, that the Act might rather be termed a Snare than a Law, and looked more like a Warrant for an Arbitrary Execution, than an Authority to ſupport a Judicial and Legal Proceeding or Trial.

Another Exception he made, was, that the Oath taken by the Commiſſioners, was not an equal Oath to adminiſter Juſtice impartially, between the State and the Subject, or taken as it ought to be in open Court; that inſtead of being tried by ſworn Jurors, and adjudged by ſworn Juſtices; he and all who fell into his unhappy Circumſtances, were to be tried by their ſworn Enemies, from whom little Juſtice was to be expected.

He inſiſted farther, that if their Authority was admitted to be Legal, yet he ought to be tried by a Jury; for the Act which eſtabliſhed the High Court of Juſtice, did not prohibit their trying him by a Jury, as *Magna Charta*, and the Statutes made in Confirmation of it, required; and if they were at Liberty to try him by a Jury; then he ought to have a Trial by a Jury, ſince *Magna Charta* and the reſt of the Statutes, which required that every Man ſhould be tried by his Peers, were ſtill in Force: If the Act for erecting their Court of Juſtice intended to enervate the force of thoſe Laws, it would have repealed them, or at leaſt have empowered them to proceed in this unuſual Way *(non obſtante)* notwithſtanding the ſaid Statutes; or at leaſt have declared they were to act in that manner, *pro hac vice*; and that it ſhould not be made a Precedent, (as they had enacted in the Lord *Strafford*'s Caſe.)

That it was his Right to be tryed by a Jury, and if they proceeded otherwiſe, *if Law was not out of Faſhion*, they would but weave *Penelope*'s Webb, and one Day's Judgment be unravelled by the next Day's Writ of Error, or a Reverſal in Parliament; but After-games for Life were dangerous, and he thought himſelf obliged in Duty to his Country, as well as for his own Preſervation, not to ſubmit to this Manner of Trial, leſt in him a Precedent ſhould be made for the Deſtruction of his Fellow Subjects.

That the Act of Ordinance for Conſtituting this Court, authorized them to proceed to Trial, Condemnation, Execution, *&c.* but they were not reſtrained as to the Manner of their Proceedings to Trial, excluſively of a Trial *per pares*; but the *Manner* of Trial, as well as the Judgment and Execution, was left to them, or the major Part of them, and if they thought fit, they might proceed by Preſentment and Jury.

But if when they lawfully might by their own Law (he urged it *ad hominem*) try him by a Jury, and would not, then they muſt pardon him, if he averred that they took from him, and in him from all the Commonalty in *England*, three Grand Priviledges; and firſt, the Benefit of his Challenges, for he might challenge thirty-five Jurors peremptorily, and challenge for Cauſe without number; and if this Benefit were allowed him here, he could challenge every one of the Bench for Cauſe, without inſiſting on his peremptory Challenges.

Here Commiſſioner Keble *told him, that the Statutes and Caſes he cited were now out of Date.*

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Then the Colonel went on, and ſaid, a ſecond Benefit they deprived him of, was, a Trial *per pares* (by his Peers,) and of ſeeing and croſs-examining the Witneſſes, produced againſt him, which ought to be by Law *viva voce*. Thirdly and Laſtly, they took from him the Right and Priviledge of a fair Verdict: A Verdict was the Senſe and Opinion of all the Jurors, and one knowing and Conſcientious Man, might preſerve an innocent Man, whom eleven ignorant or careleſs Men would deſtroy; whereas the Sentence of this Court was determined by a Majority of Voices, ſome of them influenced probably by the Opinions of others, which was the great Evil complained of in the Court of *Star-Chamber*, in the preceding Reign; and certainly was a very great Evil, eſpecially in Caſes of Life.

That a Verdict by a Jury, alſo, was to be given immediately before they had any Refreſhment, or had an Opportunity of converſing with any one that might influence or biaſs them: But this Court, that heard the Evidence to-Day, might at any Time (before the 29*th* of *September*) give their Sentence; and in the mean time how much their own Affairs might put the Evidence for him out of their Heads, and how much the State's Power might put his Safety out of their Hearts, he had juſt Cauſe to ſuſpect; but, *he was reſolved not to be in love with that Life, which the Common Law could not protect; he had rather die the Law's Martyr, than live the State's Slave.*

A ſhort Reply to his defence.

To which the Attorney General *Prideaux*, replied, that the Court was not at leiſure to take notice of his Law Caſes; but obſerved, that by his Confeſſion he had an Affection to act againſt the State, though nothing was acted; which was Treaſon ſufficient to convict him, and for that Affection he deſerved Death.

The Court over-rule all his Objections, and condemn him.

Whereupon the Court pronounced Sentence, that he ſhould be hanged, drawn, and quartered as a Traitor; but on his Petition to the Parliament, an Ordinance was made to change the Sentence, and that he ſhould be beheaded.

His Speech and Behaviour at his Execution.

The Colonel being brought to the Scaffold erected on *Tower-Hill*, on the 22*d* of *Auguſt*, ſaid when he ſaw the Block, *I Hope there is no more but this Block between me and Heaven:* Having been ſome time upon the Scaffold, he addreſſed himſelf to the People, and ſaid: " Your Buſineſs here this Day, is " to ſee a ſad Spectacle, a Man, brought in " a Moment to be cut off in the Prime of " his Years; taken from farther Opportunity " of doing Service to himſelf, his Friends, " his Country, or his God: This ſeldom " happens but for very great Cauſe; and " though truly, if my General Courſe of " Life were enquired into, I might modeſt- " ly ſay, there would be found ſuch a Degree " of moral Honeſty, as ſome might be for- " ward to expoſtulate why this great Judg- " ment is befallen me? But know I am able

" to

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" to give them, and my ſelf an Anſwer; " and out of this Breaſt to give a better Ac- " count of my Judgment and Execution, " than my Judges themſelves, or you can do. " It is God's juſt Diſpleaſure to me for my " Sins long unrepented of; many Judgments " withſtood, and Mercies ſlighted; there- " fore doth my gracious Father chaſtiſe me " with this Correction, that he may not loſe " me: and pray aſſiſt me with your Prayers, " that this Rod be not fruitleſs; but, when " under this Rod I have laid down my Life, " I may be comforted by his Staff, and re- " ceived into Glory.

" I am very confident, by what I have " heard ſince my Sentence, there are more " Exceptions made againſt the Proceedings " than ever I made: My Triers had a Law, " and the Validity of that Law is not now " to be diſputed by me. My Accuſers, or " rather Betrayers, I pity, and am ſorry for " them; they have committed *Judas*'s " Crime; I wiſh and pray for them with " St. *Peter*'s Tears; but wiſh they may be " taken up, before they have drunk more " Blood of Chriſtian Men.

" There have been ſeveral Addreſſes made " for Mercy, and I ſhall impute the Obſtruc- " tions to nothing more than my own Sins; " and ſeeing God ſees it fit (I having not " glorified him in my Life) I ſhall do it in " my Death, I am content. In the Face " of God I profeſs, I have no particular " Malice to any one of the State or Parlia- " ment: For the Cauſe in which I had a " great while ſtrove, I muſt ſay my En- " gagements and Purſuance of it, hath laid " no Scruple on my Conſcience: It was up- " on Principles of Law, of which I am a " Profeſſor, and upon Principles of Religion, " my Judgment rectified, and my Conſci- " ence ſatisfied, that I have purſued theſe " ways; for which I bleſs God I have no " Blackneſs on my Conſcience, nor have I " put this into the Bead-roll of my Sins.

" I preſume not to decide Controverſies; " I deſire God to glorify himſelf in proſpering " that Side that hath Right in it, and that " you may enjoy Peace and Plenty here, " when I ſhall enjoy my God.

" In my Converſation in the World, I " do not know where I have an Enemy with " Cauſe, or that there is a Perſon who has " injured me, that I do not as freely forgive " as if I had named them; yea, I forgive " all the World, as I deſire my heavenly Fa- " ther, for *Chriſt*'s ſake, to forgive me.

" The Buſineſs of Death is a ſad Sentence " in itſelf, if Men conſult with Fleſh and " Blood: But, truly, without boaſting I ſay " it, or if I do boaſt, it is in the Lord; I " have not to this Minute had one Conſul- " tation with Fleſh, about the Blow of the " Axe, or one Thought of it, more than " as my Paſs-port to Glory.

" I take it as an Honour, and I owe a " Thankfulneſs to thoſe under whoſe Power " I am, that they have ſent me hither to a " Place, however of Puniſhment, yet of " ſome Honour, to die a Death ſomewhat " worthy of my Blood.

" I deſire of God, that thoſe Gentlemen " in that ſad Bead-roll, to be tried by the " High Court of Juſtice, that they may " find that really there, which is nominal " in the Act, *An High Court of Juſtice, or* " *a Court of High Juſtice*; High in its " Righteouſneſs, not in its Severity; no " more clouded with the Teſtimony of " Folks that ſell Blood for Gain: *Father* " *forgive them, and I forgive them, as I de-* " *ſire thee to forgive me.*

" I deſire you now to pray for me, and not " give over Praying until my laſt Moment; " that as I have a very great Load of Sins, " ſo I may have the Wings of your Prayers " aſſiſting thoſe Angels that ſhall convey my " Soul to Heaven: And I doubt not but I " ſhall there ſee my bleſſed Saviour, and " my gallant Maſter the King of *Eng-* " *land*, and another Maſter I much honour, " my Lord *Capel*; and that I ſhall with " them, and all Saints, rejoice for ever " more."

Then having prayed a Quarter of an Hour, he turned himſelf again to the People and ſaid,

" One thing more I deſire to be clear in: " There lies a common Imputation on the " *Cavaliers*, that they are *Papiſts*, and " under that Name we are made odious to " thoſe of a contrary Opinion: I am not a " *Papiſt*, but renounce the Pope with all his " Dependencies. When the Diſtractions in " Religion firſt ſprung up, I might have " been thought apt to turn off from this " Church to the *Romiſh*; but was abſolutely " unſatisfied in their Doctrine in Point of " Faith, and very much as to their Diſci- " pline. The Religion I profeſs, is that " which paſſeth under the Name of *Pro-* " *teſtant*, though that be rather a Name of " Diſtinction than properly eſſential to Re- " ligion: But that Religion founded in the " Reformation, purged from all the Errors " of *Rome*, in the Reign of *Edward* VI. " practiſed in the Reign of Queen *Elizabeth*, " King *James*, and King *Charles*, that bleſ- " ſed Prince deceaſed; that Religion, be- " fore it was defaced, I am of, which I take " to be *Chriſt*'s Catholick, though not the " *Roman* Catholick Religion." ----- Then turning to the Executioner, he ſaid, " I have " no Reaſon to quarrel with thee; thou art " not the Hand that throws the Stone: I am " not of ſuch Eſtate to be liberal, but here is " three Pounds for thee, which is all I have: And having undreſſed himſelf for the Block, and prayed again, he ſaid, " there is none " that looks on me, though many Faces, " and perhaps different from me in Opinion " and Practice, but hath ſomething of Pity " in it; and may that Mercy that is in your " Hearts fall into your own Boſoms when " you have need of it; and may you never " find ſuch a Block of Sin, to ſtand in the " Way of your Mercy, as I have met with."

Then having ſaluted and taken leave of his Friends, he ordered the Executioner, when he ſaid, *Lord Jeſus receive me*, to do his Office; after which he ſubmitted to the Block, and his Head was ſevered from his Body at one Blow.

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Remarks on Col. Andrewe's *Trial.*

In theſe Proceedings againſt Colonel *Andrewe*, we find the Uſurpers guilty of all thoſe arbitrary Practices they complained of in the preceding Reign, and made a Colour for their Rebellion, as the Colonel ſhews at large in his Defence; nay, that they were guilty of much greater Oppreſſions, governed much more arbitrarily, and with leſs regard to the Laws and Conſtitution of the Kingdom, than any King had ever done: *Magna Charta* and the Laws made for the Confirmation of it, and of the Subjects Liberties, and the Breach whereof were ſo loudly complained of by thoſe pretended Patriots, before the War, were now laughed at, and become the Jeſt and Scorn of the Uſurpers: So little were the People bettered by depoſing and murdering their Lawful Sovereign!

But what is ſtill more to be lamented is, that ſuch were the Diſtreſſes of the oppreſſed Cavaliers, that ſome of them, unable to ſuſtain the Weight of their Misfortunes, became Spies for the Rebels, drew in and betrayed their beſt Friends, in order to ſave themſelves or their Eſtates, from the Jaws of thoſe devouring Tyrants and Oppreſſors, that now ruled the Kingdom with a Rod of Iron: All Converſation was become unſafe; no Man knew whom to truſt, even under Oaths of Secrecy; and very often were thoſe ſuſpected of Treachery that leaſt deſerved it; as we find here, ſome of thoſe very Men were put to Death for the ſame Conſpiracy, that the Colonel ſuſpected had drawn him into, with a Deſign to betray him. 1650. 2 Car. II.

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Love's *Trial.*

The Trial of CHRISTOPHER LOVE Clerk, before a pretended *High Court of Juſtice*, in *Weſtminſter-Hall*, for *High-Treaſon* the 20th of *June*, 1651.

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The Charge or Impeachment.

THE Charge which *Prideaux*, the Attorney General, exhibited on the Behalf of the *Keepers of the Liberties of* England, ſet forth, that the ſaid *Chriſtopher Love*, and his Accomplices, had traiterouſly conſpired and endeavoured to raiſe Forces againſt the Government, ſince it had been ſettled in a Commonwealth and free State, without a King and Houſe of Lords; and in order to ſubvert the ſame, had, ſince the Death of *Charles Stuart*, the late King, (who for his notorious Treaſons, Tyrannies and Murders, was juſtly condemned and executed,) traiterouſly endeavoured to promote and advance *Charles Stuart*, his eldeſt Son to the Throne; that he had alſo invited the *Scots* to invade this Commonwealth, and abetted, aided, and aſſiſted them with Money and Arms; as he had alſo *Titus*, *Maſſey*, and other Traitors, in Confederacy with the *Scots*, againſt the Peace of the Commonwealth, Free-Eſtate, Parliament, and People of *England*, and in Contempt of their Laws, *&c.* for which the ſaid Attorney, on Behalf of the Keepers of the Liberties of *England*, did impeach the ſaid *Chriſtopher Love* as a Traitor and publick Enemy, praying he might be brought to Trial, Judgment, *&c.*

The Priſoner being arraigned, inſiſted ſtrenuouſly, that he might have Counſel, to adviſe with him concerning the Legality of the Charge, before he pleaded; but this being refuſed, he pleaded *Not Guilty:* After which the Evidence was produced againſt him.

The Evidence.

The Witneſſes abundantly proved, and *Love* himſelf afterwards confeſſed, that he had been engaged in a Treaty with the King, and with the *Scots*, to reſtore his Majeſty, upon Condition he would eſtabliſh *Presbytery*, ſacrifice all his Cavalier Friends, and extirpate Epiſcopacy; and that *Love*, and his Accomplices, had actually raiſed Money to enable Colonel *Titus* to negotiate a Treaty in the Iſle of *Jerſey* and at *Breda* with the King; and for the Relief of Colonel *Maſſey* and the *Scots*, who were taken Priſoners by *Cromwell*, at the Battle of *Dunbar*, in *Scotland*; and that they had often prayed and faſted for the Succeſs of the *Engliſh* and *Scots Presbyterians* againſt the preſent Powers. Nay, it appeared, that they had applied to the Queen Dowager, to perſuade her Son, King *Charles* II. to abandon the Church of *England* and the Cavaliers, and eſtabliſh *Presbytery*; and upon theſe Terms, they promiſed to endeavour the Ruin of the preſent Powers, and to become good Royaliſts.

Mr. *Love*, in his Defence, obſerved, that there were many Things laid to his Charge, which were ſaid to be done before the Commencement of the Act, on which he was proſecuted: That he was charged with ſome Things which he knew not, and with ſome that he did not, as the raiſing Inſurrections and Rebellions; and declared he never held Correſpondence with the late King's Son, the Queen, or their Miniſters, or with any of the *Scotiſh* Nation, or ever deſired or directed any Man to do ſo; but confeſſed, however, the reading over a Commiſſion, and ſeveral Letters and Papers at his Houſe, in order to a Treaty with King *Charles* II.

Love's *Defence.*

He objected alſo, that there had been but one Witneſs to any one Fact; and that the Witneſſes were incompetent, having confeſſed themſelves guilty of Treaſon: He acknowledged, he had been preſent at ſuch Conſultations as were mentioned, but ſaid, he was always againſt giving a Commiſſion to any Perſons to treat with the King; however, if it was true, that he was concerned in ſending Colonel *Titus* to King *Charles*, this was ſaid to be done in the Year 1649. which was before the Act was made, that made it Treaſon to treat with *Charles Stuart*; and though it was enacted, that it ſhould be Treaſon to ſend Money, Horſes, or Arms into *Scotland*, the moving others to do this, he held; was not Treaſon; and if it was proved that Money was brought to his Houſe for theſe

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theſe Purpoſes, it did not follow, that he was concerned in conveying it, either to the Agents employed to treat with *Charles Stuart*, or to the *Scots*.

He ſaid, he was unwilling to confeſs any thing, before he ſaw the Witneſſes Face to Face; for, ſhould his Confeſſion have amounted to Treaſon by their Law, they might have hanged him, and ſo he ſhould have been guilty of his own Death; but now he did confeſs, there had been ſeveral Meetings at his Houſe, and that he was preſent at the reading of the Commiſſion above-mentioned, and of ſeveral Letters relating to the *Scots*; but he did not give his Conſent to the Commiſſion, or know the Danger of it; and he was adviſed, that his being preſent at theſe Conſultations, and concealing of them, was but Miſpriſion of Treaſon, for which he ſubmitted himſelf to their Mercy.

He ſhews what a violent Enemy he had been againſt the Royaliſts.

Then he ſolemnly proteſted, he was no Malignant, but on the contrary, had engaged many in the Parliament's Quarrel againſt the King; and tho' he gave but little to the War, yet he gave his *All*, (Cloaths and Books excepted.) When he was Maſter of Arts at *Oxford*, he ſaid, he was the firſt that refuſed ſigning the Canons concerning the Common-Prayer, for which he was expelled; that in 1640 and 1641, he was impriſoned at *Newcaſtle* for ſpeaking againſt the Errors of the Liturgy; and was the firſt Miniſter, after the Wars began, that was apprehended for preaching againſt the King: That he was afterwards complained of by the King's Commiſſioners at *Uxbridge*, for a Sermon he preached there againſt the Royaliſts; and now this great Trouble was fallen upon him: It was not Death he was afraid of, but was concerned that he ſhould receive it from thoſe Hands for whom he had ſuffered ſo much, with whom he had been engaged in the ſame Quarrel, and joined in the ſame Covenant: *This exceedingly touched him.*

He acknowledged, he was deſirous that the King and the *Scots* ſhould agree, becauſe he believed it much for the Intereſt of their Religion, that he ſhould not join with the Cavaliers and *Iriſh* Rebels; that ſince there was a Clauſe in the Covenant, which required them to ſeek the Union and Good of both Nations, and ſince the *Scots* had declared *Charles Stuart* their King, he believed it agreeable to their Covenant to deſire an Agreement betwixt them; he hoped they would not hearken to any politick Suggeſtions, as if it would not be for the Honour or Intereſt of the State to ſave him; but take care how they brought *innocent Blood* upon them and ſo committed himſelf to God and their Conſciences.

The Reply to the Priſoner's Defence.

To this Defence Mr. Attorney replied, that Mr *Love* had confeſſed much more than Miſpriſion of Treaſon; that the frequent Repetition and long Concealment of thoſe treaſonable Conferences was Treaſon; and he thought there was very little Ingenuity in the Priſoner's Confeſſion, which he did not make till the Facts were plainly proved upon him; that *his Imprecations, calling God to Witneſs he never wrote, or ſent a Letter, or lent Money*, when it appeared he had moved and Solicited others to write and to lend Money, were ſhameful Equivocations, eſpecially in a Miniſter of the Goſpel; but all the College of Jeſuits had not more Shifts and Evaſions than theſe Men had: One of his Brother-Preachers, he obſerved, refuſed to give Evidence againſt *Love*, becauſe *he believed the Life of the Priſoner pretious in God's Sight*; which ſhewed, *they thought the Life of a Traitor more pretious than the Common-wealth*; but he hoped they ſhould root out thoſe Opinions, or the Men that held them.

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That Mr. *Love* had been guilty of the higheſt Ingratitude, conſpiring the Deſtruction of that State which had been ſo exceeding bountiful to him; he did not only enjoy his Liberty and the Protection of the Government, but, by his own Confeſſion, had one of the beſt Preferments in *London* conferred upon him: And what had he to do to interpoſe and diſquiet himſelf about the Adminiſtration of the Commonwealth? That he had dared to charge his Blood upon the Court, but it had been well if he had thought of Blood; before he had been inſtrumental in ſpilling ſo much Blood in *Scotland*; that there would be no living in Society, if ſuch Incendiaries were not brought to Juſtice; that he hoped the Court would conſider what Juſtice was due to the Commonwealth, and moved they would appoint another Day for the Counſel of the State to reply to the Priſoner's Defence.

The Court reflect on the Priſoner.

Then the Preſident obſerved to Mr. *Love*, how zealous he had been for reſtoring the *Presbyterian* Government and Diſcipline, and ſaid, he had diſplayed his Gift of Oratory in his Defence; but that the Orators amongſt the Heathens were the principal Incendiaries, and there was ſcarce any Hereſies, Murders, Treaſons, or any other notorious Villanies perpetrated in Chriſtendom, but Prieſts, or thoſe that called themſelves Miniſters of *Jeſus Chriſt*, had a conſiderable Share in them; and though the Priſoner ſeemed to value himſelf upon his Office, he would have him know, that their Office of adminiſtering Juſtice was ſuperior to his, who only taught it, and that Judgment and Juſtice were the higheſt Religion in the World.

A further Reply to the Priſoner's Defence.

The Priſoner being brought before the Court again the 27th of *June*, the Counſel for the Commonwealth made a further Reply to the Priſoner's Defence: And as to his Objection, that the Witneſſes againſt him had confeſſed themſelves guilty of the ſame Crimes they accuſed him of, ſuch had always been deemed legal Witneſſes; They acknowledged, there ought to be two Witneſſes in Treaſon; but in a Caſe conſiſting of complicated Facts, and a Reiteration of many Actions, it was not neceſſary there ſhould be two Witneſſes to every Fact: But, if there was one Witneſs to one Fact, and another to another Fact, both tending to the Accompliſhment of the ſame Species of Treaſon, theſe were two Witneſſes, as the Law required: So when one Witneſs teſtified, he was preſent at Mr. *Love*'s at the reading of a treaſonable Letter, a Second atteſted the

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writing of it, and a Third the ſending of it, though they ſpoke to ſeveral Parts of the Buſineſs, yet all concurring to the ſame Treaſon, this was legal Proof,

That though Mr. *Love* had objected, that the Evidence of Treaſon ought to be as clear as the Sun, they thought it Difficult to meet with ſuch Proof, where a Plot was hatched in Darkneſs, where every Thing had been tranſacted under a Diſguiſe: Their Meetings and Conſultations went under the Notion of Prayer and Faſting, and their Contributions to foment a Rebellion paſſed under the Name of Charitable Uſes; nor could any Place be more obſcure and unſuſpected than Mr. *Love*'s Houſe, who was a Miniſter of the Goſpel, and had been ſo very active in the Parliament's Service, that he had urged it as Meritorious.

As to his Objection, that he was charged with Crimes committed before this Court was erected, it was anſwered, That their Commiſſion gave them Cognizance of Crimes committed before and ſince; and it was never made an Objection at the Aſſizes, that the Offences were committed before the Judges received their Commiſſions; nor did he ſtand charged with any Crime before there was a Law made for the Puniſhment of it: For even on the 30th of *January*, 1648. an Ordinance paſſed, *That whoever ſhould proclaim, declare, publiſh, or any way promote* Charles Stuart, *or any other Perſon to be King, or chief Magiſtrate, without conſent of Parliament, ſhould be adjudged a Traitor:* Againſt which Mr. *Love* had highly offended, nor was there any Time limited for Proſecution by that Act: That another Law was made indeed, in *July* 1649. declaring what Offences ſhould be Treaſon; by a Third, that Court was conſtituted, and it was declared what Offences they were to take Cognizance of; and by a Fourth, all Correſpondence with the *Scots* was made Treaſon; againſt every one of which, the Evidence had ſhewn to a Demonſtration the Priſoner had offended: That Mr. *Love* was not impeached for a ſimple Omiſſion; he had acknowledged his debating theſe Matters; and though he pretended to abominate ſome of the Meaſures taken by his Accomplices, ſtill he continued amongſt them, and had ſeveral Meetings and Conſultations with them at his own Houſe, and therefore was guilty of the whole: There were no acceſſaries in Treaſon.

If the Priſoner had not been guilty of Actual Rebellion, he was proved to be guilty of ſuch Facts as tended to Rebellion; and though the Thing was not accompliſhed, it was nevertheleſs Treaſon: If they were to wait till a Rebellion was actually raiſed, it might probably be too late to call the Conſpirators to an Account.

As to his taking it ill of the State, that he ſhould ſuffer by them, for whom he had done and ſuffered ſo much, he thought the State had moſt Reaſon to take up the Complaint: Had a Cavalier, a profeſſed Enemy, conſpired againſt them, they might have borne it; but that Mr. *Love*, who had preached and prayed for them, and gone along with them; that he, who lived like a petty King in this Commonwealth, ſhould conſpire againſt it, was a high Aggravation of his Crime; nor could it be thought hard, that he, who in ſuch Circumſtances proſecuted the State, ſhould be proſecuted by them.

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It was obſerved alſo, that ſome Paſſages in the Priſoner's Sermon at *Uxbridge*, were very applicable to the preſent Occaſion, particularly where he ſays, *I have ever thought that too much Mercy towards Malignants, hath made more Delinquents than ever Juſtice hath done: Mercy ſhould not weigh down Juſtice: In God they are both equal; Why ſhould it not be ſo in Man? The ſparing of Offenders hath made many worſe, few or none better: To them that have ſhewed no Mercy, let Judgment be ſhewed without Mercy: Much Guilt contracted, much innocent Blood ſpilt, which muſt be aveuged either on us, or by us; and thoſe who lie under the Guilt of much innocent Blood, are not meet Perſons to be at Peace with, till all the Guilt of Blood be expiated, either by the Sword of the Law, or by the Law of the Sword: A Peace can never be ſafe or juſt till then.* And the Counſel for the State concluded with demanding Judgment againſt the Priſoner, who thereupon offered a Paper of Exceptions, and deſired he might have Counſel aſſigned him to argue them; and accordingly Mr. *Maynard*, Mr. *Hale*, Mr. *Waller*, and Mr. *Archer*, were aſſigned to be of the Priſoner's Counſel.

The Priſoner's Rancour againſt the Royaliſts retorted upon him.

The Priſoner takes exceptions to the Charge.

The Subſtance of the Exceptions were, that the Impeachment had not ſtrictly purſued the Acts of Parliament on which it was founded; that the Priſoner was charged with treaſonable Facts, ſaid to be done ſome Years before ſome of the Acts paſſed; that the Witneſſes had been promiſed Rewards, and threatned, to make them give Evidence againſt him.

Mr. *Archer* and Mr. *Waller*, the Priſoner's Counſel, offering to argue the Exceptions, the Court would not ſuffer it, becauſe they had not taken the Engagement; and Mr. *Hale* only was ſuffered to ſpeak to them: But there appearing very little in the Exceptions, it is ſufficient to ſay they were overruled. Mr. Attorney therefore moving again for Judgment, the Priſoner was ſentenced to be beheaded.

They are over-ruled. He is ſentenced to be beheaded.

The whole Body of *Presbyterian* Fathers addreſſed the Parliament to pardon *Love*, but could obtain no more than a Months Reprieve, and he was executed on *Tower-Hill* the 22d. of *Auguſt*; when he declared he deſired the King's Reſtoration on no other Terms than the Eſtabliſhment of *Presbytery*, which was now in Danger of being ſuppreſſed by the *Independants*. A great many more of the *Presbyterian* Preachers, in *London*, were diſcovered to be in a Confederacy with the *Scots* to bring in the King at this Time; but it was not thought expedient to drive the whole Body of them to Deſpair, by executing any more of them, now the *Scots* were in Arms; leſt by joining with that Nation, and the *Cavaliers*, their new erected Commonwealth ſhould be endangered; for at this very Inſtant Advice came to *London*, that the King was entered *England* with an Army of *Scots*, and that

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that *Cromwell* was ſo far behind him, that he could afford the preſent Powers no Protection: However they were ſoon recovered from their Conſternation by the Battle the King loſt at *Worceſter*, the 3*d* of *September* following.

Remarks on Love's Trial.

The Uſurpers, finding that the People were no longer to be impoſed on by the ſpecious Pretences they made of defending their Religious and Civil Rights; that they were ſenſible, Ambition and Avarice, and a View to the advancing their private Fortunes, were the real Motives of all their Actions; that they were endeavouring to eſtabliſh an arbitrary, tyrannical Government, inſtead of vindicating the Subject's Liberties and Properties; did not think it proper to commit the Fortune of their State Priſoners to Juries according to the antient Laws; but when they determined to ſacrifice any Perſon, appointed a ſelect Number of their own Creatures, Sharers in the Plunder of the Nation, to judge, or rather murder, the pretended Criminal in a ſolemn Manner.

Love would never have been convicted by a Jury of Citizens, who were at this Time as much prejudiced againſt the Uſurpers, as ever they had been againſt the King; and yet it is evident they were ſo biggotted to their Idol *Presbytery*, that they would never have admitted the King to reign over them, on any other Terms than thoſe of eſtabliſhing it, and diſcarding the *Cavaliers*. The King and the Royaliſts therefore, were very little obliged to them; when finding themſelves harraſſed, ſcorned, and derided by their preſent Maſters the *Independants*, they would have made the King their Tool, to have eſtabliſhed *Presbytery*, and ſuffered him to have enjoyed the Name of King, on Condition of lodging the Sovereign Power in their Hands; ſo that he would in reality have been no more than their Officer, to execute what they were pleaſed to decree. Theſe were the Favours *Love* and his Brethren intended to indulge the King and Nation in; for which neither the Church or the Crown ſeem to be much obliged to them, though they are very loud in crying up this Kind of Loyalty.

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It is reported, that the Interceſſions for *Love* were ſo powerful, that *Cromwell* was prevailed on to ſpare him; but the Meſſenger who carried the Expreſs from *Holland*, where *Cromwell* then was, to *London*, falling into the Hands of ſome *Cavaliers*, they took away the Papers *Cromwell* had written in *Love*'s behalf, and detained the Meſſenger till the Execution was over; obſerving that *Love* had been the moſt implacable, of all the late King's Enemies, and that he intended nothing more by the Treaty with his Majeſty King *Charles* II. for which he was condemned, than to re-eſtabliſh his own Sect upon the Ruins of the Church of *England*, and the Royaliſts.

The Trial of JOHN GIBBONS, before the High Court of Juſtice in *Weſtminſter-Hall*, for *High-Treaſon*, the 18th of *July*, 1651. 3 *Car.* II.

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Gibbons's Trial.

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The Charge.

THE Charge was the ſame with that exhibited againſt *Love*, *viz.* that the Priſoner had endeavoured to advance *Charles Stuart* to the Throne, and correſpond with the *Scots*, who were preparing to invade *England*.

The Priſoner inſiſts on a Trial by Jury.

The Priſoner inſiſted on his being tried by a Jury of his Neighbours, according to the antient fundamental Laws, but the Court told him, the State had preſcribed another Way of Trial, more honourable and Advantageous to him, which he muſt ſubmit to.

The Evidence.

Major *Adams* depoſed, that the Priſoner was preſent at a Conſultation, for endeavouring an Agreement between the King and the *Scots*; and drawing up a Petition to the King; and that there were ſome Letters ſent to, and received from *Scotland*, which the Priſoner was privy to; that there were Letters alſo ſent to, and from the King and his Agents, which were read at Mr. *Love*'s Houſe when the Priſoner was preſent; that he brought a rough Draught of the Inſtructions to one of their Meetings, which were to be ſent to *Holland* for treating with the King; that he was a conſtant Man at the Conſultations of the *Malecontents* in *London*, and particularly was preſent at Mr. *Love*'s, when a Letter was read from *Maſſey*, wherein he deſired that Arms and Money might be ſent down to *Scotland*, and the Company agreed to ſend him three or four hundred Pounds.

Major *Alford* depoſed, that he (the Deponent) was at a Conſultation at the *Swan* at *Dowgate-Hill*, when Mr. *Titus*, one of the King's Agents, was preſent, and gave them an Account of the good Inclinations of the King, declaring he was willing to caſt off the *Cavaliers*, if he could be aſſured there was a Party in *England* that adhered to the Covenant; and that a Petition to his Majeſty was drawn up, and ſent over, by *Titus*; but he could not be poſitive the Priſoner was preſent.

That a Commiſſion was prepared at Mr. *Love*'s Houſe for the Lord *Willoughby* and others, and Inſtructions concerning a Treaty between the King and the *Scots*, which the Priſoner and the Deponent carried down to *Graveſend*, and delivered to Mr. *Maſon* (a Domeſtick of the Lord *Percy*'s) to be carried over to *Holland*; that the Deponent was ſent over to *Calais* by the Conſpirators, and brought Papers back from thence, which were read at Mr. *Love*'s Houſe; and the Priſoner was preſent at the reading of ſome of them.

Mr. *Harvey* depoſed, that *Gibbons* informed him, two thouſand Pounds were ſent down to *Scotland*, and that *Maſſey* was to land with For-

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ces in the *Weſt*; that many of the Lord General's Soldiers had deſerted, and that a Town was to be delivered up.

Major *Huntington* depoſed, that *Gibbons* firſt acquainted him with the Conſpiracy, told him, he might hear News at Mr. *Love*'s Houſe, and that the Priſoner and the Deponent were preſent at Mr. *Love*'s, when a Paper ſent from *Maſſey*, *Graves*, and *Titus*, was read.

The Counſel for the State, having produced all their Evidence, and made their Obſervations upon it, the Priſoner deſired time to anſwer it, and was allowed till the 23*d*. Inſtant; when appearing before the Court again, he told them he was as ill provided for his Defence then, as he was before; for having employed one to take Notes of the Charge and the Evidence, the Court had ordered the Notes to be taken away, and deprived him of all Means of making his Defence: He deſired therefore, they would order his Notes to be delivered him, or it was impoſſible he ſhould offer any thing material; but this being refuſed, he only obſerved in general, that the Evidence was full of Contradictions; that the Witneſſes were not ſuch as the Law required, having confeſſed themſelves guilty of the Crimes they charged him with, and gave their Teſtimony againſt him, either through Fear of Death, or Hopes of Reward, and that there was but one Witneſs to any one Fact; concluding with Proteſtations of his Innocence, which the Court giving little Credit to, Judgment was pronounced, *That the ſaid John* Gibbons *ſhould ſuffer Death as a Traitor, by having his Head ſevered from his Body:* and he was executed accordingly.

The Court takes away the Priſoner's Notes.

He makes a general Defence.

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Condemned and executed.

This Gentleman is another Inſtance of the Juſtice exerciſed by theſe Uſurpers: He was one of thoſe on whom they were determined to execute their Vengeance; and therefore, denying him the Privilege of a Trial by a Jury, according to the antient Laws of *England*; they cut him off by a packed Aſſembly of their Creatures, whom they denominated a High Court of Juſtice: We ſee them alſo taking the Priſoner's Notes and Materials for his Defence, and they might with equal Juſtice have murdered him, without the Formality of a Trial.

Remarks on the Trial of Gibbons.

The Reader, no doubt, obſerves alſo, from this and ſome former Proceedings, that the Uſurpers frequently changed the manner of Execution, as well as the manner of Trial; and that inſtead of hanging and quartering Perſons, condemned for what they called Treaſon againſt their Commonwealth, they were content ſometimes with beheading them.

The Puniſhment for Treaſon altered by the Uſurpers.

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The Trial of RICHARD FAULCONER, for *Perjury*, during the Uſurpation, in the *Upper-Bench*, as it was then called. *Paſch.* 1652. 4 *Car.* II.

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Faulconer's *Trial.*

The Indictment.

THE Indictment was found by the Grand Jury of the County of *Middleſex*, and charges, That *Richard Faulconer*, late of *Weſtbury*, in the County of *Southampton*, Gent. intending to bring the Right Honourable *William* Lord *Craven*, Baron of *Hampſted-Marſhal* in danger of his Life, and of the Sequeſtration of his Goods and Lands, did, on the 10th of *February*, 1650. at *Whitehall*, in the Pariſh of *St. Martins in the Fields*, in the County of *Middleſex*, before *Samuel Moyer*, Eſq; *James Ruſſel*, Eſq; and other Commiſſioners for compounding with Delinquents, and managing their Eſtates, corruptly, wilfully, falſly, and maliciouſly take his Corporal Oath, That ſeveral Officers, about thirty in Number, made a Petition to the *Scots* King *Charles* to entertain them to fight for him againſt the Commonwealth of *England*, by the Name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*, for Recovery of his juſt Rights, and reinſtating him in his Throne; and that the ſaid Officers deputed him, the ſaid *Richard Faulconer*, and Colonel *Drury*, to preſent the ſaid Petition: That he, the ſaid *Faulconer*, drew up the ſaid Petition; and, with the ſaid Colonel *Drury*, applied to the Lord *Craven* to give it to the Queen of *Bohemia*, to preſent to the ſaid King of *Scots*; and that the Lord *Craven* directed them to deliver the ſaid Petition to the Queen of *Bohemia* themſelves, and he would ſpeak for them; and that the Queen of *Bohemia* did preſent the ſaid Petition; and that the Lord *Craven* afterwards told them, they ſhould receive an Anſwer from the Queen of *Bohemia* to their Petition, and that he (the ſaid Lord *Craven*) had ſpoken to the Queen of *Bohemia* in their Behalf: Whereas the whole Narrative, relating to the ſaid Petition, and the Delivery of it to the King of *Scots*, was falſe, and the ſaid *Richard Faulconer* perjured, &c. The Counſel for the Commonwealth having opened the Indictment, ſaid, they ſhould prove, that the Oath which *Faulconer* had taken was falſe, and that he had done it with a Deſign to get Money, and that the Conſequence of it might have been the Ruin of the Lord *Craven*, of his Eſtate, Fame, and Fortune: That there was indeed a Petition delivered, but not a Petition of the Tenor *Faulconer* had ſworn; and it was evident *Faulconer* knew the Contrary.

Then the Witneſſes were called, and Proof having been firſt made, that *Faulconer* had taken the Oath before the Commiſſioners for Sequeſtrations.

Mr. *Horſnel* depoſed, that the Night before the King of *Scots* went from *Breda*, Colonel *Drury*, Captain *Briſcoe*, and divers others; carried a little ſhort Petition to the King, to put him in mind of a former Petition they had delivered, praying that ſome Courſe might be taken, that their Arrears, which they owed in Town, might be paid, or their Landlords, where they lodged, would be Sufferers

The Evidence againſt Faulconer.

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Sufferers, for they were not able themſelves to pay them; that he (the Deponent) ſet his Hand to the Petition, and was in the Room when *Drury* and *Briſcoe* came to deliver it; but there was not a Word in the Petition that related to any thing but the Relief of their preſent Neceſſities: And being asked by the Court, if there was no mention of *barbarous and inhuman Rebels*, he anſwered, There was nothing of that Nature in it.

Captain *Briſcoe* alſo depoſed, That there were divers Gentlemen in great Diſtreſs met at Colonel *Drury*'s Chamber, at the Time of the Treaty between the *Scots* King and the Commiſſioners at *Breda*, and they agreed to prefer a Petition to the King, which was drawn at Colonel *Drury*'s Chamber, expreſſing their Neceſſities, and that they might not be left to periſh, and deſiring that the People of the Town might be ſatisfied; but that, going to deliver it, they met Secretary *Long*, who told them, it was to no Purpoſe, for there was no Money come in. That the Petitioners, having notice afterwards that the King was to depart from *Breda*, met together again, and drew a ſhort Petition, to put the King in mind of his Promiſe to Secretary *Long*, concerning ſatisfying the People of the Town, and the Relief of the Petitioners: Which Paper the ſaid *Briſcoe* delivered to the *Scots* King, who threw it on the Table, at which they ſtood amazed, being likely to be left in Diſtreſs; but the Lord *Craven* accidentally coming in, *Briſcoe* ſaid to him, Sir, We are a Company of poor diſtreſſed Gentlemen, likely to be left here in Miſery; (his Lordſhip ſaid, *Well*;) and the next Morning the King went away without giving any Relief to the Petitioners. And the Court demanding, if there were any ſuch Words in it as *barbarous and inhuman Rebels*, he anſwered, he read it, and there was no ſuch Thing in it; the whole Scope of it being to relieve their Neceſſities, there was not ſo much as any Mention of the Parliament.

Colonel *Drury* depoſed to the ſame Effect, adding, That Major *Faulconer* drew the Petition himſelf in his Son's Paper-Book, and he had the Draught ready to produce; (exhibiting the Original to the Court at the ſame Time, under *Faulconer*'s Hand;) in which Petition they ſhewed how they had ſerved the late King, and what Neceſſities they were in; that they gave this Petition to Secretary *Long*, who told them, it was in vain to deliver it to the King, for he had not a Piſtole left: That they followed Secretary *Long*, however, and ſolicited him for three Weeks together, but he ſtill put them off; whereupon they drew a ſhort Petition, the Day before the King went from *Breda*, to remind the King of the Promiſe he had made to Secretary *Long*, and deſiring that the Inhabitants of *Breda* might be relieved, or they would be undone: That *Briſcoe*, and the Deponent, delivered it to the King, who laid it on the Table; and Lord *Craven* coming in at that Inſtant, Captain *Briſcoe*, who had trailed a Pike under his Lordſhip, told him there were many Gentlemen ready to ſtarve, and deſired him to ſpeak a favourable Word to the Queen of *Bohemia* for them; but the next Morning the King went away, and nothing was done for the Petitioners.

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Then the firſt Petition produced by *Drury*, of *Faulconer*'s own Hand-writing, was read in Court, being couched in theſe Words:

The Petition, delivered to King Charles II.

May it pleaſe your Majeſty,

" THE great Senſe we have always " had of your Majeſty's preſent " Condition, hath been the prime " Cauſe of our long Silence; but now our " Neceſſities, are grown ſo great and inſup- " portable, that we are enforced either to " petition or periſh; moſt humbly deſiring " your Majeſty to take into your Princely " Conſideration their Extremities, who have " been ever ready to proſtrate their Lives in " your Majeſty's Royal Father's Service; " nor no leſs willing and ready to proſecute " the ſame in what your Majeſty ſhall com- " mand; moſt humbly petitioning your Roy- " al Order, that ſome Courſe may be taken " for our preſent Subſiſtance, that our future " Endeavours may not be buried in that un- " avoidable Calamity which our Loyalty " hath reduced us unto,

And we ſhall cordially pray for your Majeſty.

Colonel *Drury* further depoſed, that he dictated the Petition to *Faulconer*, who wrote it at his Chamber; and that it was afterwards written over fair, and delivered to Secretary *Long*, and that the ſecond Petition was only to put the King in mind of his Promiſe. And being asked by the Court, whether the Words *barbarous and inhuman Rebels* were in the firſt Petition, he anſwered, That *Faulconer* moved to have the Words, *barbarous and inhuman Rebels*, inſerted, but was anſwered, That as they were Soldiers of Fortune, it was uncivil Language, and therefore they would not give way to it: He added, that Captain *Briſcoe* was one of them that was pitched upon to deliver the firſt Petition, on account of the many Wounds he had received, believing the King would commiſerate their Caſe the more; and the Deponent was appointed the other, becauſe he was known to the Queen of *Bohemia:* That the Lord *Craven* was not preſent at the Delivery of the firſt Petition, but was there when the laſt was delivered, to remind the King of his Promiſe. The Colonel further depoſed, that *Faulconer*, being diſcontented they got no Money, ſaid, as they were going to Town, *This is a horrid Thing, that we ſhould be in this Caſe, to follow a Thing they call a King. God damn me, I will go into* England, *and do all the Miſchief I can.*

Then Witneſſes were produced, to ſhew that *Faulconer* was a Man that deſerved no Credit.

Wooldridge, an Attorney of *Clement's-Inn*, depoſed, That *Faulconer* came to his Chamber, about a Twelvemonth before, and told him, he had been in the *Low-Countries*, and ſeen ſome Lords ſit in Council with the King; that he had ſworn againſt the Lord *Craven*, which would bring great Advantage to the State: He had received fourſcore Pounds al-

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ces in the *Weſt*; that many of the Lord General's Soldiers had deſerted, and that a Town was to be delivered up.

Major *Huntington* depoſed, that *Gibbons* firſt acquainted him with the Conſpiracy, told him, he might hear News at Mr. *Love*'s Houſe, and that the Priſoner and the Deponent were preſent at Mr. *Love*'s, when a Paper ſent from *Maſſey*, *Graves*, and *Titus*, was read.

The Counſel for the State, having produced all their Evidence, and made their Obſervations upon it, the Priſoner deſired time to anſwer it, and was allowed till the 23*d*. Inſtant; when appearing before the Court again, he told them he was as ill provided for his Defence then, as he was before; for having employed one to take Notes of the Charge and the Evidence, the Court had ordered the Notes to be taken away, and deprived him of all Means of making his Defence: He deſired therefore, they would order his Notes to be delivered him, or it was impoſſible he ſhould offer any thing material; but this being refuſed, he only obſerved in general, that the Evidence was full of Contradictions; that the Witneſſes were not ſuch as the Law required, having confeſſed themſelves guilty of the Crimes they charged him with, and gave their Teſtimony againſt him, either through Fear of Death, or Hopes of Reward, and that there was but one Witneſs to any one Fact; concluding with Proteſtations of his Innocence, which the Court giving little Credit to, Judgment was pronounced, *That the ſaid John* Gibbons *ſhould ſuffer Death as a Traitor, by having his Head ſevered from his Body:* and he was executed accordingly.

The Court takes away the Priſoner's Notes.

He makes a general Defence.

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Condemned and executed.

This Gentleman is another Inſtance of the Juſtice exerciſed by theſe Uſurpers: He was one of thoſe on whom they were determined to execute their Vengeance; and therefore, denying him the Privilege of a Trial by a Jury, according to the antient Laws of *England*; they cut him off by a packed Aſſembly of their Creatures, whom they denominated a High Court of Juſtice: We ſee them alſo taking the Priſoner's Notes and Materials for his Defence, and they might with equal Juſtice have murdered him, without the Formality of a Trial.

Remarks on the Trial of Gibbons.

The Reader, no doubt, obſerves alſo, from this and ſome former Proceedings, that the Uſurpers frequently changed the manner of Execution, as well as the manner of Trial; and that inſtead of hanging and quartering Perſons, condemned for what they called Treaſon againſt their Commonwealth, they were content ſometimes with beheading them.

The Puniſhment for Treaſon altered by the Uſurpers.

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The Trial of RICHARD FAULCONER, for *Perjury*, during the Uſurpation, in the *Upper-Bench*, as it was then called. *Paſch.* 1652. 4 *Car.* II.

1652. 4 Car. II.

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ready for doing it, and expected a greater Reward. And as to *Faulconer*'s Character, *Wooldridge* deposed, that he was as wicked a Man as any in *England*, had spent his Estate and left his Country; that at *Petersfield* he drank a Health to the Devil in the middle of the Street, for which a Justice of the Peace bound him over to the Sessions. Mr. *Jackson* deposed, That about five Years before, *Faulconer* was ranting and drinking Healths at *Petersfield*, and among others, drank a Health to the Devil, and said, *I have spent my Brother's Estate and my own, and will never want Money; for while there is any in the Nation, I will get it one way or other; I will do something of Infamy to be talked of, that the Name of* Faulconer *may never die.*

Mr. *James Graham* deposed, That in the Year 1647. being in a Cellar with *Faulconer*, he took out a two and twenty Shilling Piece of Gold, and put it into the Deponent's Hand, and said, *God damn him, Blood and Wounds, he would bugger his Soul to Hell*; and these Words he used frequently, to Man, Woman, and Child, and when he was corrected for it, he would answer, *Damn him, Blood and Wounds, he would do it:* But the Court demanding of the Witness, if *Faulconer* ever did any thing upon him, he answered, No; he was able to deal with as good a Man as he.

Mr. *Bradley* deposed, that he heard *Faulconer* say, *Our Saviour* Christ *was a Bastard, and a Carpenter's Son, and carried a Basket of Tools after his Father.*

Mr. *Dyer* deposed, That *Faulconer* procured a Man to personate Captain *Bishop*; that he confessed he had once an Intention to murder Captain *Bishop*, because he did not supply him with Money so fast as he expected, though he had received seventy Pounds of the Captain.

Captain *Ballard* deposed, That *Faulconer* counterfeited a Letter from Colonel *Burgess* to Captain *Bishop* one of the Council of State, in order to get Money of *Bishop* for the Intelligence, and would have had the Deponent carry the Letter, but he refused.

Powel, a Justice of Peace of *Middlesex*, deposed, that he committed *Faulconer* for Felony, and that he had the Reputation of a Highwayman.

Mr. *Goodman*, Goaler of *Ailesbury*, deposed, that on the 20*th* of *March* 1648. *Faulconer* was committed to *Ailesbury* Goal, by Sir *Thomas Saunders*, and three other Justices of the Peace, upon Suspicion of Felony, Robbery, and Murder.

The Defence made by the Prisoner's Counsel.

To this Evidence, the Counsel for the Prisoner answered, that the Oath *Faulconer* had taken before the Commissioners for Sequestrations, was not duly proved; what had been produced being only the Transcript of a Copy of the Oath, as entered in the Journals of Parliament: And if the Words *barbarous and inhuman Rebels*, were not in the Petition delivered to the King of *Scots*, there was what amounted to as much: The Petitioners say, *They prostrate themselves before him, and promise to prosecute his Cause, as they had done his Father's*, who looked upon them as Rebels; that Mr. *Faulconer*'s Case was very hard, being employed at the Court at *Breda*, as an Emissary and Spy for the Commonwealth; and at his return, giving an account of his Observations at *Breda*, had let something fall relating to the Lord *Craven*, without any Design; that the Substance of what *Faulconer* had sworn, was acknowledged to be true, and that the very Words *barbarous and inhuman Rebels* were debated on drawing up the Petition, and he might forget whether they were inserted or not, and therefore could not be charged with wilful and corrupt Perjury; it was but a Mistake at most: Besides, they should shew that he did not swear to the very Words, but *to that effect.*

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The Evidence for Faulconer.

Then Captain *Bishop*, one of the Commissioners for sequestred or forfeited Estates, was produced as a Witness in Behalf of *Faulconer*. The Captain deposed, that *Faulconer* had done great Service to the State; *that it was owing to him, the Commonwealth sat safe at that Hour, and that he himself* (the Deponent) *was now alive*, and it was an ill Requital to proceed in this manner against such a Man.

Then the Captain gave particular Instances of several Plots and Intrigues of the Royalists against the State, which he shewed, had been defeated by *Faulconer*'s Means, *(but the Editor is not so good as to give us the Particulars, though they might have given us great Light into the Transactions of those Times.*

Captain *Bishop* added, that he had never known *Faulconer* drink, or misbehave himself, but always observed him to be a sober Man; that *Horsnel*, one of the Witnesses against *Faulconer*, was a disaffected Person, and ordered to be tried before the High Court of Justice; that Colonel *Drury* was a *Papist* in Arms, and being brought before him to be examined, appeared a forward Witness, having the Lord *Craven* in his Mouth before he was questioned about him; and that in his Evidence here, he contradicted what he had sworn before him; (but this appeared a mistake;) and as to *Faulconer*'s having Money given him, Captain *Bishop* observed it was but reasonable he should be rewarded for the Services he had done the State; and, notwithstanding what had been sworn against him, he believed the Substance of *Faulconer*'s Information was true; and this was all that was requisite; for he swore but *to that Effect*, as he could testify, having drawn up the Information for him; and if those words were not in, *Faulconer* directed them to be put in.

Then Mr. *Winslow*, another of the Commissioners for sequestered Estates, being upon the Bench, desired leave to inform the Court, that the Commissioners meeting at *Whitehall*, to administer the Oath to *Faulconer*, the Information was read to them, which had been prepared by Captain *Bishop*, and having no Clerk with them, and there being occasion to make some Alterations, the Captain took the trouble of writing it over again; after which it was read over to *Faulconer*, and attested by him, and all the Commissioners present subscribed their Hands; adding, that the Oath taken by *Faulconer*, was,

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was, that the Information or Depoſition made by him *contained the Truth, the whole Truth, and nothing but the Truth.*

Mr. *Barners*, another of the Commiſſioners, alſo declared that this was true.

Then Lieutenant-Colonel *Joyce* was produced as an Evidence for *Faulconer*, and ſhewed, that ſeveral Plots and Conſpiracies againſt the Commonwealth, had been defeated by the Intelligence *Faulconer* had given of them; (*but theſe the Editor it ſeems, did not think fit to acquaint us with, as not being material, he ſuggeſts; which ſhews either his Partiality, or a very great Defect in Judgment.)*

Colonel *Joyce* added, that *Faulconer* had been an Enemy to himſelf indeed, in ſpending his Eſtate, but that he was always faithful to the Parliament; and he believed that *Faulconer* had cuffed and buffeted ſome of the Witneſſes againſt him for their Malignity, and therefore nothing could be expected to come from them to *Faulconer*'s Reputation; and that *Faulconer* had been ſent over to *Holland* as a Spy, on account of his Fidelity to the Commonwealth.

Lieutenant-Colonel *Bardſey* depoſed, that he ſet his Hand to the Petition at *Breda*; that the Lord *Craven* was deſired to deliver it; but his Lordſhip ſaid he was no Courtier, he was a Servant of the States, and directed them to the Queen of *Bohemia*, who delivered it, and told the Petitioners, the King would do what he could for them; but he went away the next Morning. That *Faulconer* moved to have the Words *barbarous and inhuman Rebels* inſerted in the Petition he drew; but it was oppoſed, and they were omitted.

Michel an Innkeeper depoſed, that *Faulconer* had lain at his Houſe a Year and a Half; that he was a Scholar bred up at the Univerſity, and he believed a very honeſt Man.

Captain *Mowbray* depoſed, that Captain *Briſcoe*, one of the Witneſſes againſt *Faulconer*, uſed to decoy the *Engliſh* Officers and Soldiers at *Amſterdam* on board the Dutch Ships, and ſell them for Slaves to the Plantations; that the *Dutch* immediately clapt ſuch *Engliſh Men* under Hatches, and gave *Briſcoe* ſix Dollars per Head for them when they were ſecured----That he had been acquainted with *Faulconer* five Years, and he behaved himſelf civilly, for ought he knew.

Mr. *Corey*, *(the Editor tells us)* teſtified ſomething concerning *Briſcoe*'s ſending Men to the Plantations, and that he would drink and ſwear ſometimes, as other Men did, that were accuſtomed to it.

The Obſervations of Faulconer's Counſel on the Evidence.

Upon this Evidence the Counſel for *Faulconer* obſerved, that the Teſtimony of Captain *Biſhop*, and Lieutenant-Colonel *Joyce*, who gave an account of the Services he had done the Commonwealth, was to be regarded much more than the partial Evidence that had been given againſt him: That it appeared the Deſign was not only to convict *Faulconer* of Perjury, but, by this Conviction and diſcrediting of him, to undermine what had been done by the Parliament upon his Teſtimony, and other concurrent Evidence, and to avoid the Sale the Parliament thought fit to make of the Lord *Craven*'s Eſtate: That nothing had been objected againſt *Faulconer*'s Credit while they had any other Stone to turn, though there had been great Endeavours made in Parliament to prevent the Sale of that Lord's Eſtate: When all other Means failed, then they fell to framing this Indictment of Perjury.---- *Faulconer* might have appeared guilty of ſome Extravagances, but they ſaw what Part he was appointed to act: He was to diſſemble, and appear what he was not, and perhaps when he was amongſt the God-damn-me's, and ſuch ſort of Men, he might ſeem like his Company; this might conduce to his Deſigns: The Part he was appointed to act rendered it neceſſary to diſſemble, and to wind and turn himſelf into all Shapes; and, though not *to drink a Health to the Devil*, yet ſometimes *hold a Candle to the Devil.*

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That it was proved, the firſt Petition declared they would ſerve the King as they had ſerved his Father, and they ſerved his Father againſt the Parliament; therefore their Petition muſt be underſtood to be entertained to ſerve the King againſt the Parliament.

That it was a melancholy Caſe, when this Gentleman had performed ſuch Services for the Commonwealth, and Settlements had been made in Parliament grounded on his Information, that they ſhould be blaſted and reverſed by an artificial Indictment, preferred a great while after: If he ſhould, for what he had done with a View of ſerving the State, be convicted of *Perjury*, it would be a Diſcouragement to all Men to undertake the like Employment for the future.------Concluding, that if there was a Miſtake in what he had ſworn, yet it appeared not to be maliciouſly or corruptly done, and therefore the Jury ought to find for *Faulconer*.

The Reply of the Counſel againſt Faulconer.

To this Defence, the Counſel for the Commonwealth replied, That the Evidence which had been given for *Faulconer*, tended chiefly to magnify his Services to the Commonwealth: They did not diſpute his Services, they ſaid, but his having done good Service, as a Spy beyond Sea, did not licence him to give a falſe Accuſation of another kind, that had no Relation to what he was ſent about: And as to what Mr. *Biſhop* depoſed, that he made Oath *to that Effect*, Mr. *Biſhop* acted but the Part of a Secretary; the Information was mended and ſettled by the Commiſſioners, and ſworn by *Faulconer* without the Words *to that Effect* in it; and it was not for a Clerk to come and ſay, the Words *to that Effect* ought to have been added; at that rate any Oath may be evaded.

As to the Objection that had been made to *Briſcoe*'s Credit, that he ſold his Fellow-Soldiers to the *Dutch* Plantations, for twelve Stivers (Pence) a Day; this was but hearſay Evidence, what a *Dutchman* had been heard to ſay, and no Regard was to be had to it, nor would his being given to ſwear take off his Teſtimony.

That the Words *barbarous and inhuman Rebels*, it appeared, were propoſed by *Faulconer* himſelf, and upon a Debate rejected, which *Faulconer* could not be ignorant of, or pretend not to know, when the Petition was drawn by himſelf.

They

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They had indeed brought ſome Witneſſes to ſupport *Faulconer*'s Credit, but they were to conſider what damnable Blaſphemy had been proved againſt him, (in Relation to our Saviour's Nativity, *&c.*) nor could there be any Excuſe for a Man's kneeling down, and drinking a Health to the Devil; his good Services would not juſtify his complying with *God-damn-me's*, he was not ſent to do ſuch things; beſides, they had proved he had perſonated another Man, and offered at ſuch a Villany as a Man would be aſhamed to name; theſe could not be palliated by any Service whatever: That Mr. *Biſhop* appeared a very forward Witneſs, and when he had given his Evidence, took upon him the Part of an Advocate, and therefore could not be looked upon as impartial; he ſaid, indeed, *that it was through* Faulconer *that the Commonwealth ſat ſafe at that Hour*, but *it was God they ſat ſafe by*, and not by him; and when they were upon a Queſtion of Truth, Truth and Righteouſneſs were to be conſidered, before all the Service in the World.

That it was evident, the Lord *Craven* was not concerned in the firſt Petition, in which they made the King of *Scots* Offers of their Service; this was three Weeks before the laſt Petition was delivered, which deſired nothing more, than that they might have Money to pay their Quarters; and yet *Faulconer* had ſworn, that in this laſt Petition, delivered the Night before the King left *Breda*, the Petitioners offered to ſerve him againſt the Commonwealth, *thoſe barbarous and inhuman Rebels*; which appeared to be falſe; and where a Man ſwears what he knows to be falſe, Corruption is always implied.

Nor was even this laſt Petition promoted by the Lord *Craven*, for it was delivered before the Lord *Craven* came in: Neither would the Words *to that Effect* have helped the Defendant, if they had been in his Affidavit, for there was nothing like the Words *barbarous and inhuman Rebels*, in either of the Petitions; this could not be an Overſight in *Faulconer*, who was ſo well acquainted with the Contents of them; and beſides, it had been proved, that when he could not obtain what he deſired beyond Sea, he declared he would go over to *England*, and do what Miſchief he could. And, laſtly, as to the Objection, that the Oath he had made had not been duly proved, they found it recorded in the Journals of Parliament; and it was not to be preſumed the Parliament would enter it into their Books, and cauſe a Nobleman's Eſtate to be ſold upon it, if no ſuch Oath had been made.

After the Reply, the Judges delivered their reſpective Opinions, but the Editor has not thought fit to give us their Reaſons, or to tell us whether the Court were divided, or unanimous: He ſays no more, than that *Faulconer* was convicted of *Perjury*, and that thereupon the following Order was made by the Court: *(viz.)*

Faulconer *convicted.*

Faulconer *is committed; but no Judgment given.*

The Defendant was this Day brought into Court, under the Cuſtody of the Marſhal, upon an Indictment for Perjury, whereunto he had formerly pleaded Not Guilty; *and the Jury thereupon being impanelled and ſworn; found him Guilty of the Perjury in the Indictment mentioned; and thereupon the ſaid* Faulconer *is committed to the Cuſtody of the ſaid Marſhal, there to remain until,* &c.

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Here we ſee ſome of thoſe infamous Arts practiſed by the Rebels, to dive into their Prince's Councils, in order to betray him, and prevent his Reſtoration: They made Choice of the moſt abandoned Wretches, ſuch as would curſe and ſwear, blaſpheme, perjure themſelves, or commit any Villany to promote *the good Old Cauſe:* All was innocent, all was meritorious, that was done to ſupport their Uſurpation; the End, in their Opinion, ſanctified the Means, how deteſtable ſoever. Such a Complication of Wickedneſs never was charged and proved upon any one Man as upon *Faulconer*; and yet did theſe Uſurpers skreen him from Juſtice, in Conſideration of the Services he had done their Commonwealth.----And we find ſome of their Leading Men declaring at this Trial, *That to* Faulconer *was owing the Safety and Eſtabliſhment of their State:* The Counſel for the Commonwealth, indeed, denied it, and inſiſted, that their Eſtabliſhment was *the Work of God.* But as their Uſurpation was founded in Treachery and Rebellion, and evidently ſupported by ſuch Inſtruments as theſe, though God in his Wiſdom ſuffered the Uſurpers to tyrannize over the Subjects of this Kingdom for a Time, their Power and Influence ſeem to be derived immediately from the Prince of Darkneſs, rather than from that Being, that is of purer Eyes than to behold Iniquity with Pleaſure.

Remarks on Faulconer's *Trial.*

Even their grand Argument of Succeſs, to prove the Juſtice of their Cauſe, failed them ſoon after; and God was pleaſed to work a much greater Miracle for the Reſtoration of their Lawful Prince, in Peace, without the leaſt Bloodſhed or Oppoſition, than they could pretend he ever wrought in all the Victories, they were permitted to obtain over their Sovereign and their Fellow-Subjects. The Regicides themſelves, when they were brought to Juſtice, acknowledged, that *God had ſpit in their Faces*, and diſclaimed their accurſed Cauſe, of which they had long impiouſly declared him the Grand Patron and Protector.

I cannot diſmiſs this Trial without obſerving the extreme Diſtreſs, both the King and his faithful Subjects were reduced to, during this intolerable Uſurpation: Thoſe of them that remained at home, were plundered, impriſoned, decimated, and forced to compound for their Eſtates over and over again, till they had nothing left: Impious Villains were encouraged to draw them into Plots for the Reſtoration of their Sovereign, and then betray them; perjured Men were frequently ſuborned to ſwear them out of their Lives and Eſtates. In this Trial we have an Inſtance of the Lord *Craven*'s loſing his Eſtate, on the Teſtimony of the infamous *Faulconer*, who ſwore he had promoted a Petition to his Majeſty King *Charles* II. in which he ſtiled the Uſurpers *barbarous and inhuman Rebels*; when *Faulconer* himſelf appeared to be the Man that propoſed that Expreſſion, and that

it

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it was unanimouſly rejected by the Cavaliers. If it be ſaid, that the State was ſo juſt to proſecute *Faulconer* for this notorious Perjury, I cannot tell with what Views they might ſuffer this; but it appears that they had ſeveral Times before ſaved him from the Gallows; and even now, when he was evidently convicted of the Perjury, they would not permit him to be puniſhed for it: And it is very poſſible that ſome of the Chiefs of the Rebels found their Account in recovering the Lord *Craven*'s Eſtate for him again, or *Faulconer*'s Perjury had never been animadverted upon; no doubt his Lordſhip made very large Offers to ſome of their Grandees to preſerve *ſome Part* of his Eſtate from Sequeſtration.

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Nor were the Hardſhips of the Cavaliers abroad leſs than theirs at home: We find the King himſelf reduced to that Neceſſity, that he had not a Piſtole left, and all his Adherents ſtarving in the *Low Countries* and elſewhere, inſomuch that many of them ſold themſelves to the *Dutch* for Slaves, and were tranſported to their Plantations; as many *Engliſh* and *Scots* Gentlemen had been before to the *Engliſh* Plantations by the Uſurpers themſelves.

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The Trial of Lieutenant-Colonel JOHN LILBURN, for *Felony*, in returning to *England*, (after an Ordinance of the Uſurpers made for his Baniſhment,) at the Seſſions at the *Old-Baily*, *London*, the 13th, 14th, 15th, and 16th Days of *July*, 1653. 5 *Car.* II.

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Lilburn's *Trial.*

His account of the Occaſion of this Proſecution.

LIEUTENANT-Colonel *Lilburn* relates, that he had been Solicitor for his Uncle, *George Lilburn*, Eſq; and Mr. *Joſiah Primate*, for the Recovery of a Colliery in the County of *Durham*, valued at 5000*l. per Ann.* taken from them by Force and Violence by Sir *Arthur Haſlerig*; that they, the Plaintiffs, preferred a Petition to the Parliament for Juſtice, but Sir *Arthur*, by his Intereſt, procured a Report in his Favour; and that thereupon the Parliament voted the Plaintiff's Petition to be falſe, malicious, and ſcandalous, that Sir *Arthur* had not been guilty of Oppreſſion or Tyranny, as the Petition charged; that the Petition ſhould be burnt by the Hangman, and that *Primate* the Petitioner, ſhould pay ſeven thouſand Pounds, or lie in Priſon till it was paid. And on the 15th of *January*, 1651-2, made ſeveral Reſolutions againſt him the ſaid Lieutenant-Colonel *Lilburn*, who had ſolicited the Cauſe for his Uncle and the ſaid *Primate*, viz. *That he ſhould pay* 3000 l. *to the Uſe of the Commonwealth*, 2000 l. *to Sir* Arthur Haſlerig, *and* 2000 *l. to the Commiſſioners for compounding with Delinquents* (for ſlandering them before the Houſe, I preſume.)

A Reſolution of the Commons to fine and baniſh him.

They reſolved alſo *That Colonel* Lilburn *ſhould be baniſhed out of* England, Scotland, *and* Ireland, *and the Territories thereto belonging, making it Felony for him to return thither; and that he ſhould depart within thirty Days.*

That the Serjeant at Arms ſhould apprehend him, and bring him to the Bar, of the Houſe, to receive Judgment on the *Tueſday* following; and he thereupon ſurrendered himſelf voluntarily to the Serjeant, and was brought into the Houſe on the Day prefixed, when the Speaker ordered him to kneel, but he refuſed; whereupon they ordered him to withdraw, which he did, and afterwards a Bill was ordered to be brought in for his Baniſhment, and that ten Days of the Time ſhould be taken off, that had been allowed for his Departure, by the aforeſaid Reſolution: Mr. *Lilburn* ſays farther, that he ſent the Houſe Word by their Serjeant, that the Reaſon, he refuſed to kneel, was not out of any Diſreſpect to the Houſe; but he apprehended;

A Bill for his baniſhment brought in.

He refuſes to kneel before the Houſe.

if he kneeled at their Bar to receive Sentence, he ſhould ſeem to acknowledge the Juſtice of it; whereas he had broken no Law, but followed a juſt Cauſe in an honeſt Way, without uſing any baſe or wicked Means to effect his Deſigns; that though the Report had been made to the Houſe in Favour of Sir *Arthur*, they had fully proved every Clauſe and Circumſtance in their Petition (except Sir *Arthur Haſlerig*'s private Correſpondence with the Commiſſioners of Sequeſtrations;) but if they had not, there was no Law to authorize the Parliament to paſs ſuch a Sentence upon him: He would therefore be cut in ten thouſand Pieces before he would kneel, and thereby betray his own, and the Nation's Liberties.

A Petition in his behalf.

In the mean Time a Petition was preſented by a Multitude of People, in the Behalf of Colonel *Lilburn*, being directed *To the ſupreme Authority, the Parliament of the* Commonwealth *of* England, and entitled *The humble Petition of many well affected People, inhabiting the City of* London *and* Weſtminſter, Southwark, *and Parts adjacent, in behalf of the juſt Liberties of the free People, of* England, *highly concerned in the Sentence againſt Lieutenant-Colonel* John Lilburn.

In this Petition they tell this Rump, or Refuſe of a Parliament, that if Colonel *Lilburn*'s manifold Services for their *Cauſe* could be forgotten, and they looked upon him but as the meaneſt of well-affected Perſons, yet in their late Cenſure of him, they apprehended the native Rights of the Subject to be ſo invaded, that there never was greater Occaſion to apply for Redreſs.

For if he had in reality been an Offender, he muſt be ſo by ſome Law in being, made before the Fact, and ought to be proſecuted in the Courts of Law, and be convicted by a Jury, and ſuch Puniſhment inflicted as the Law preſcribed. The Law declared *that no Freeman ſhould be adjudged of Life, Liberty, or Eſtate, but by Juries*, a Freedom which Parliaments in all Ages contended for, as the Birthright and Inheritance of the Subject, as appeared in the *Petition of Right*, which this very Parliament once ſtiled *A moſt excellent Law.*

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They truſted therefore, this Parliament would preſerve their Rights entire to them and their Poſterity, from the Encroachments of thoſe that would innovate upon them: They conceived alſo, the Original of theſe unhappy Differences between Sir *Arthur Haſlerig* and Mr. *Lilburn*, were occaſioned by Sir *Arthur*'s ſtopping ſome Money that was due to Mr. *Lilburn*, without legal Proceſs; and that, had the Matter been duly tried by a Jury at common Law, all the Inconveniencies ariſing on his Proceeding had been avoided; that the Way of determining Cauſes by the major Votes of a Committee, was not ſo ſatisfactory as the Verdict of a Jury, where a Man might have his Challenges to thoſe that were evidently partial, or otherwiſe unqualified to judge of the Fact.

They took notice alſo, of the Exorbitance of the ſeveral Fines laid upon him, amounting to ſeven thouſand Pounds, which was more than the Colonel could ever be ſuppoſed able to pay, and was therefore contrary to *Magna Charta:* Nor did their Sentence reſt here; but they had condemned him to Death, if ever he was found in *England*, and that without any Crime laid to his Charge, for ought appeared (the Report of the Committee not being ſuffered to be publiſhed); and all this without any legal Proceſs commenced againſt him, or being allowed a Trial by Jury, which in Caſes of Life had never been denied a Commoner in the worſt of Times.

They pray therefore, 1. *That the Parliament will revoke their Sentence againſt Colonel* Lilburn: 2. *That they will permit the Parties to proſecute their Cauſe at Law.*

Lilburn *goes into Exile.*

But the Parliament taking no notice of the Petition, the Colonel deſired the Speaker's Paſs to go beyond Sea in purſuance of their Sentence; and this being denied him, he ſet out for *Dover*, attended by a Multitude of his Friends, where producing the Common's Votes for his Baniſhment, the Cuſtom-houſe Officers ſuffered him to paſs, and he arrived ſoon after at *Amſterdam*, where he met with the printed Act for his Baniſhment.

The Subſtance of the Act for his Baniſhment.

This Act or Ordinance, is entitled *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn, and recites, that, whereas upon the 15*th* of *January*, 1651. a Judgment was given in Parliament, againſt the ſaid *Lilburn*, for High Crimes and Miſdemeanors, relating to a falſe, malicious, and ſcandalous Petition preſented to the Parliament, by *Joſiah Primate* of *London*, Leatherſeller (and, as I preſume, drawn up by *Lilburn)*; it was therefore enacted that the ſeveral Fines, impoſed by the ſaid Judgment on the ſaid *Lilburn*, ſhould be forthwith levied and paid, and that the ſaid *Lilburn* ſhould within twenty Days, to be accounted from the 15th of *January* 1651. depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories, and Dominions thereof; and if he ſhould afterwards be found, or ſhould be remaining in *England*, *Scotland*, or *Ireland*, or within any of the Iſlands, Territories, or Dominions thereof, he ſhould be adjudged a Felon, and be executed as a Felon, without Benefit of Clergy; and all Perſons, who ſhould harbour or conceal him, ſhould be adjudged acceſſary to the Felony after the Fact.

Made Felony for him to return.

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The Colonel returning to *London*, in *June* 1653. was apprehended and carried before *John Fowk*, then Lord Mayor, who made his Mittimus, and ſent him to *Newgate*, and he was brought to his Trial at the *Old-Baily* on the 13th of *July* following. Mr. *Lilburn* being arraigned, and required to hold up his Hand, deſired the Court to inform him what that Ceremony meant; and whether he held up his Hand or not, does not appear; but he tells us that, after a great deal of Wrangling on that Point, he ſaid, *My Lord, I muſt acknowledge my Name to be* John Lilburn, *Gent. Son of* Richard Lilburn, *of* Thickley-Punchardon *in the County of* Durham, *Eſq; and I am here ready to anſwer any Thing any Man hath to lay to my Charge.* Then the Indictment was read; and it being demanded if he was *Guilty* or *Not guilty*, he made a Speech, applying himſelf to the Chief Baron *Wylde*, and deſiring he might ſpeak to the Inſufficiency and Illegality of the Indictment; for he apprehended it would be too late to aſſign Errors after he had pleaded: He alſo deſired he might have a Copy of the Indictment, and Counſel aſſigned him; abſolutely refuſing to plead, till he had an Order for them: And after having been brought ſeveral Times before the Court, and threatened ſeverely if he refuſed to plead, he did at length obtain a Copy of the Indictment, which ſet forth, that, in and by a Statute made in the Parliament of the Commonwealth of *England*, holden the 30*th* of *January*, 1651. entitled *An Act for the Execution of a Judgment given in Parliament, againſt Lieutenant-Colonel* John Lilburn, it was enacted, that the ſaid *John Lilburn* ſhould within twenty Days (to be accounted from the 15th of *January* 1651.) depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof, and if he ſhould after that time be found, or ſhould be remaining within *England*, *Scotland*, *Ireland*, or any of the Iſlands, Territories and Dominions thereof, he ſhould be adjudged a Felon, and executed as a Felon without Benefit of Clergy; and that the ſaid *John Lilburn*, the Statute aforeſaid not weighing, nor the Puniſhment therein contained, any whit fearing, after the Time limited, *viz.* on the 15th of *June* 1653. was found and was felonioufly remaining in *England*, *viz.* at *London*, in the Pariſh of *Giles* without *Cripplegate*, in the Ward of *Cripplegate London*, againſt the Form of the ſaid Statute, the publick Peace, *&c.*

He comes to England again.

His Arraignment.

The Indictment.

Mr. *Lilburn* put in his Exceptions to the Indictment on *Saturday* the 18th of *July*, ſigned by himſelf; but the Court refuſed them, becauſe they were not ſigned by his Counſel; to which Mr. *Lilburn* anſwered, they had aſſigned him Counſel but to one Point; whereas he had ſeveral Pleas and Exceptions to the Indictment, which his Counſel durſt not ſign, unleſs they were aſſigned his Counſel at large: That his Counſel alſo informed him, that all the Judges and Lawyers in *England* were not able to draw up a legal Indictment on the Act of Baniſhment of the 30th of *January* 1651. and the Votes or Judgment as it was called, of the 15*th* of *January* 1651. upon which it was grounded; for that the Judgment and the Execution

His Exceptions to the Indictment.

Not ſigned by Counſel.

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Execution of the Judgment ought to be like a Pair of Indentures; tally exactly in every Circumſtance: But in the pretended Judgment, and the Act for the Execution thereof, there were theſe three Eſſential differences. *Firſt*, The Judgment ſaid, Lieutenant Colonel *John Lilburn* ſhall be baniſhed, and depart out of *England* within *thirty Days*, and the Act for executing the Judgment ſaid he ſhall depart within *twenty Days*; ſo that there was ten Days Difference betwixt the Judgment itſelf, and the Act for the Execution of it. *Secondly*, The Judgment baniſhed him out of *England*, *Scotland*, and *Ireland*, and the Iſlands and Territories thereto belonging, but not out of their *Dominions*; ſo that *Wales* being denominated in Law a *Dominion*, he might ſecurely have lived in *Wales* all his Days; notwithſtanding that Judgment: But then comes the Act of the 30th of *January* 1651. which is called an Act for the Execution of the ſaid Judgment, and baniſhes the ſaid *John Lilburn* out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof; ſo that here was another eſſential Difference between the pretended Judgment, and the Act for the Execution thereof. *Thirdly*, The Judgment ſays, *If he ſhall return into* England *at any Time after the Expiration of the ſaid thirty Days, he ſhall be adjudged a Felon*, &c. But the Act ſays, *If he ſhall return to* England *after his Baniſhment.*

Whereupon the Court gave him time till Six in the Evening, that his Counſel might ſign his Exceptions; but *Lilburn* obſerved that the Time was ſo ſhort, that it would be impoſſible to get their Hands, and that they had ſo long denied him his Right in this particular, that moſt, if not all his Counſel were gone the Circuit, adding that he was moſt concerned in the Exceptions; his Life muſt pay for the Faults in them, if there were any; and therefore preſſed that they would accept them without his Counſel's Hands; but the Court told him this could not be admitted.

He reflects on the Tyranny of the Adminiſtration.

Lilburn replied, it was very well known, that the greateſt Men now in *England* were his Adverſaries, and it was no great Difficulty for them to cruſh any Man they ſet themſelves againſt: That his Counſel durſt not oppoſe ſuch potent Enemies, nor was it reaſonable they ſhould; they were Men of great Eſtates, and great Practice, and it would probably be their Ruin; he could not in Conſcience deſire it of them, and therefore again deſired they would accept his Exceptions under his own Hand: But they refuſed, and ordered him to get his Exceptions ſigned before Six that Evening.

Some of his Exceptions ſigned by Counſel.

Mr. *Lilburn*, being brought into Court again at Six in the Evening, ſaid, his Exceptions were ſigned by Mr. *Norbury* and Mr. *Maynard*; and that they blamed him very much for his Folly, in not demanding *Oyer*, or hearing in open Court,

His further Demands.

Of the Act of Baniſhment, the Judgment upon which it was grounded, and of the Crimes that were charged as the Occaſion of it; that it was his Right in Law to have *Oyer* of theſe, and afterwards Copies of them, to enable him to perfect his Exceptions, for they informed him, *That, if no legal Act could be produced, or if the Judgment was illegal, or if no Crimes in Law were charged, on which the Judgment could be founded, all was null and void*; and what was not good Originally, could never be made ſo by Tract of Time; and what was not ſound and ſubſtantial in its Foundation, could never be made ſo by the Superſtructure. He confeſſed they had not Time to draw up a formal Claim of this Right; but, according to their Inſtructions, he had got a Paper drawn up and engroſſed, which was ſigned with his own Hand; but the Court refuſed to receive it, becauſe it was not ſigned by his Counſel.

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Whereupon *Lilburn* ſaid, his Counſel adviſed him to dwell upon his Demand of *Oyer*, as his Right, being his chief Shield and Buckler to defend his Life; demanding, if they would rob him of his Birthright, the Benefit of the Law? which he repeated ſeveral Times, with an exalted Voice, when the Court interrupted him; telling them, If they denied him Juſtice, and would not permit him to ſpeak for his Life, *he appealed to all the People that heard him that Day, declaring, that the Lord Mayor and the Court robbed him of his Birthright, and would not ſuffer him to ſpeak for his Life*; and being Maſter of very good Lungs, he perfectly drowned the Voices of his Proſecutors, and abuſed the Recorder *Steel*, and the Attorney-General *Prideaux* very handſomely; and when the Court endeavoured to browbeat and ſilence him, he cried out again, *My Lord, will you murder me without Law, by robbing me of my Birthright, and denying me* Oyer *of the Act* &c? My able honeſt Counſel have commanded me to dwell upon my Demand of *Oyer* as upon my Life; if this were granted me I am ſecure; for you can produce no legal Act of Parliament, or Judgment againſt me, nor have I ever committed any Crime to found them upon.

He appeals from the Court to the People.

At length the Court, weary with the Oppoſition he made, told him, if he put in the Exceptions he had under his Counſel's Hand, they aſſured him, in caſe his Counſel, at their next Meeting, would avow his Demand of *Oyer*, they would grant it: Whereupon Mr. *Lilburn* delivered in his Exceptions; in which the Objections he had made verbally to the Proceedings, were drawn up in Form, and ſigned by his Counſel *Norbury* and *Maynard*.

Lilburn afterwards made a Speech to the Court, in which he repeated much of what he had ſaid before, and then withdrew. He obſerves, that the Court were in ſuch Conſternation when he appealed to the People, that they thought fit to ſend for more Forces to protect them, though Colonel *Okey* had a ſtrong Guard of Soldiers there from the Beginning of the Trial.

The Trial imperfect.

Neither Mr. *Lilburn* or his Friends give any further Account of his Trial, only it appears he was *acquitted* by the Jury; from whence, I preſume, his Exceptions were all over-ruled. The Jury were afterwards called before the Council of State, and examined concerning their Verdict; but it does not appear any of them were puniſhed for the Verdict they had given.

He was acquitted.

Some of Lilburn's *bold Expreſſions in Court*

Among other Expreſſions of *Lilburn*'s at the Trial, it is related by ſome, he told the Court, *That*

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That the Act for his Baniſhment, was an unjuſt, an unrighteous, and a treacherous Act; that he doubted not to ſhatter it to Pieces; they could not make an Act of Parliament ſince the King's Head was cut off: That if there was any Judicatory in Parliament, it was in the Lords and not in the Commons; they had nothing to do to ſentence any but their own Members: That all Crimes ought to be adjudged by the Common Law; Acts of Attainder were unlawful: He told them, *They made the Land groan with their Oppreſſions.* To *Prideaux* he ſaid, It is the Admiration of my Soul, that a Man ſhould ſit in Judgment on me that thirſts after my Blood

The Army, he ſaid, had, many of them, been very good Inſtruments to deliver them from Tyranny, but *he wiſhed they had not then a greater Tyrant* (meaning *Cromwell*) *than they had delivered them from:* His Jury, he called, *His honourable Jury*, and affirmed, that it was *They that were the Keepers of the Liberties, of* England; *they were Judges of the Law as well as of the Fact.*

Remarks on Lilburn's Trial.

All the World muſt allow Mr. *Lilburn*'s Remarks on this Proſecution were very juſt; indeed he was furniſhed with them by ſome of the ableſt Counſel in *England*; and, if he was not the Author of them, yet his Courage in repeating and maintaining thoſe Maxims they had furniſhed him with, and in a Manner telling *Cromwell* to his Face, that his Power was uſurped, and his Adminiſtration tyrannical, was very heroical, and what few Men durſt have done, when he was arrived at that Height of Power.

And here we ſee how ſenſible the City of *London*, and the whole Body of the Nation, were, as well as *John Lilburn*, of the Oppreſſions they ſuffered, and how much they had contributed to the Subverſion of the Laws, and enſlaving themſelves and their Poſterity, by adhering to their hypocritical Leaders: We ſee they petitioned, threatened, and upbraided the Uſurpers with deſtroying that Conſtitution they pretended to preſerve, and deluding them with ſpecious Pretences of defending their invaded Liberties, till they had poſſeſſed themſelves of Sovereign Power, and eſtabliſhed their Tyranny, and then becoming much greater Oppreſſors than their Lawful Prince had ever been: They complain of thoſe very Abuſes, for the Redreſſing of which they had been ſpirited up into a Rebellion againſt their Natural Sovereign, and made acceſſary to his Murder. They obſerve that Men were condemned without a legal Trial, that they were exorbitantly fined, beyond the Value of their Eſtates; and an Ordinance of Parliament made for baniſhing a Man, who had offended againſt no Law in being. So ſenſible now were the People of the Hypocriſy of their Leaders, that it was not in the Power of the Uſurpers to pack a Jury to convict this Malcontent: But his Acquittal was of little Advantage to him; the Nation was then governed with a Rod of Iron, and ſince they could not get him condemned in the Courts of Law, they made uſe of pure Force, and detained this rough Member of the Church-Militant, who had done and ſuffered ſo much for the *good Old Cauſe*, in Priſon to his dying Day; and though he had quarrelled with, and oppoſed every Government he had lived under, it appears, he became at laſt a peaceable *Quaker*, and diſclaimed the Uſe of Carnal Weapons.

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Lilburn dies a Quaker.

I ſhall only obſerve further, that That Rump of the Commons, that then went under the Name of the Parliament of the Commonwealth of *England*, aſſumed a greater Power, both in Civil and Criminal Caſes, than the Houſe of Lords, or Commons, or both of them united, had ever exerciſed before the Conſtitution was ſubverted; fining and baniſhing Men at Pleaſure, without hearing them in their Defence; though indeed, they ſeem at this Time to have been no more than the Uſurper's Tools, to execute his Decrees, notwithſtanding the pretended Government was exerciſed in their Names.

Buried after their Way.

I ſhould have taken notice before, that the Corpſe of *John Lilburn*, after he was dead, was brought by the Quakers to their Meeting-Houſe at the *Bull and Mouth*, in *London*, where it was put into a plain Coffin, without any Pall or other Covering, and from thence carried, in Contradiction to antient Cuſtom, with the Head foremoſt, to the New Church-Yard at *Bethlehem*, where it was interred, without Chriſtian Burial, or any Ceremony, but the Sighs of the Brethren.

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Proceedings in the *Upper-Bench* (as the *King's-Bench* was then denominated) on a *Habeas Corpus*, brought by Captain JOHN STREATER, in *Michaelmas* and *Hilary* Terms, 1653. 5 *Car.* II.

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Streater's Caſe.

The Habeas Corpus *he brought*

THE *Habeas Corpus* was in *Engliſh* and of the following Tenor: "By the Keepers of the Liberties "of *England*, by Authority of Parliament, "to the Keeper of the Priſon of the *Gate-houſe*, &c. We command you, that the "Body of *John Streater*, in the Priſon under your Cuſtody detained, as it is ſaid, "together with the Day and Cauſe of his "taking and detaining, by whatſoever Name "the ſaid *John* is called therein, you have "before us, in the *Upper-Bench* at *Weſtminſter*, on *Wedneſday* next after the Morrow of St. *Martin*, to undergo and receive thoſe Things which our ſaid Court "of *Upper-Bench* ſhall then and there order "concerning him in this Part. And this "you may not omit at your Peril, and muſt "bring with you this Writ. Witneſs *Henry* "*Rolle*, (the Chief-Juſtice) at *Weſtm.* 12. "*Nov.* 1653."

Committed by a Warrant of the Council of State.

Captain *Streater* being brought before the Court the 23d of *November*, the Return of the *Habeas Corpus* was read, wherein were recited

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recited two Warrants; the first by the Council of State, dated 12 *Sept.* 1653. and directed to the Keeper of the *Gatehouse*, commanding him to receive and keep the Body of the said *John Streater*, committed for publishing of seditious Pamphlets against the State: The other was a Warrant signed by the Speaker of the Commons, dated the 21st of *Nov.* and directed to the Keeper of the *Gatehouse*, commanding him, by Virtue of an Order of Parliament, made the same Day to receive and keep the said *John Streater* Prisoner, till he should be delivered by Order of Parliament.

And continued by a Warrant from the Speaker of the Commons.

He moves to be bailed.

Then the Prisoner's Counsel moved, that, as to the first Order, if there was no more than the publishing of scandalous Pamphlets, he might be bailed; and the Court being of Opinion he ought to be bailed, ordered the Prisoner to speak to the second Warrant. Whereupon Captain *Streater* said, As to the second Part of the Return, which mentioned an Order of Parliament, he had this Exception: *That it did not mention any Cause of his Imprisonment.*

And whereas it had been objected, That the Parliament was not bound to shew Cause upon a Commitment, he hoped the Parliament would not encourage the maintaining an Argument so repugnant to their Honour, and which had, within Memory, been condemned by the Parliament themselves: That the Parliament on the 17th of *March*, 1648. had declared, That their Authority was only by Law; that they were sensible of the Excellency and Equality of the Law of *England*, and would uphold the true approved Rules of Law: They had declared also, That the good old Laws, and Courts of Justice, and the Customs of *England* were the Badges of their Freedom, Rights, and Privileges; that by MAGNA CHARTA, *none shall be taken or imprisoned, but by legal Process, according to the old Law of the Land*; and there being no lawful Cause shewn in the Return, let the Command come from whence it will, the Law would warrant his being discharged: That an Order of Parliament could not repeal or suspend Laws; and Sir *Edward Coke* observes, that even an Act of Parliament is not pleadable in a Court of Record, but by Record or under Seal, much less an *Order* of Parliament that is not recorded on the Parliament Rolls itself.

The Attorney General opposes his being bailed.

The Court demanding of the Attorney-General, what he had to offer in Answer to this, he said, he should not argue upon it; for the Prisoner was committed by an Order of Parliament, who need give no account of their Reasons for it to that Court; it was their Pleasure to commit him, till he should be cleared by an Order of the same Power, and the Court could not but remember Orders of the like Nature. To which it was said, There had indeed been the like Orders, in the Cases of *Lilburn*, *Chetwin*, and others, who made their Application to the Parliament, and if the Prisoner would apply himself to the House, they would do him Justice; but as he was committed by them, who were a superior Court, and they only knowing the Cause of his Commitment, it was not fit for the *Upper-Bench* to controul the Parliament, or to enquire into it. That the Parliament were the supreme Power, and might alter or suspend the Laws as they pleased, and were not obliged to express the Cause of Commitment, as inferior Courts and Officers were; that their Orders were no more to be questioned than their Acts; and there was no Necessity of reading a Bill three Times now, as when the Legislative Power was in King, Lords, and Commons. Mr. Justice *Nichols* also said, he had known several Acts of Parliament passed on once reading: And upon the whole the Court was of Opinion, that an Order made by the Parliament, in whom the Legislative Authority was then vested, must be Law to them; they must not dispute their Authority.

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The Court refuse to Bail him.

The Parliament dissolved.

The Parliament being dissolved by *Cromwell*, in the *Michaelmas* Vacation, *Streater* obtained an *alias Habeas Corpus* in *Hilary Term*, of the following Tenor, *viz.*

He brings an alias Habeas Corpus.

" *Oliver*, Lord Protector of the Common-
" wealth of *England*, *Scotland*, and *Ireland*,
" &c. to the Keeper of the *Gatehouse*, &c. We
" command you, as formerly we commanded
" you, that the Body of *John Streater*, Gent.
" in Prison under your Custody detained, to-
" gether with the Day and Cause of his taking
" and detaining, by whatsoever Name the
" said *John* is called therein, you have before
" us at the *Upper Bench* in *Westminster* upon
" *Monday* next, after the 15 Days of St. *Hi-*
" *lary* next coming, to undergo and receive
" those Things which our Court of *Upper*
" *Bench* aforesaid, shall consider of him in
" this Behalf, and this you may not omit in
" any wise, upon Peril that will fall thereon.
" Witness *Henry Rolle*, at *Westminster* the
" 26th of *January* 1653."

To which *Aquila Wykes*, the Keeper of the Gatehouse Prison, made the following Return:

" To his Highness the Lord Protector of
" the Commonwealth of *England*, *Scotland*,
" and *Ireland*, and the Dominions thereof,
" in the *Upper Bench Westminster*, at the
" Day and Place in the Writ to this Schedule
" annexed named: I do certify, that before
" the coming of the said Writ to me direct-
" ed, that is to say, the 12*th* Day of *Septem-*
" *ber* 1653. *John Streater*, in the Writ
" named, was committed to my Custody,
" and there detained by Virtue of a Warrant
" from the late Council of State, and by a-
" nother Warrant from the Speaker, *&c.*
(both which Warrants are recited) and then concludes, " And these are the Causes of the
" detaining of the said *John Streater*, whose
" Body before the Lord Protector aforesaid,
" I have ready accordingly, at the Day and
" Place in the said Writ contained, as I am
" within commanded."

Aquila Wykes, *Keeper of the Gatehouse.*

He moves to be discharged.

The Prisoner being hereupon committed to the Marshal of the *Upper Bench*, and brought into Court again by Rule the 7th of *February*, his Counsel moved that he might be discharged; for that the Parliament being dissolved, their Order was no longer in Force.

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The Attorney gives very odd Reaſons againſt it.

To which Mr. Attorney anſwered, that Parliaments could not be diſſolved; that the Parliament was the ſame Power that was ſtill in being; and as by this Commitment the Priſoner was not to be delivered, but by Order of Parliament, he conceived he could not be releaſed by any other Power; he muſt be content till the Meeting of the Parliament, which was to be the 3*d* of *September*, 1654. He admitted that an Order of one or both Houſes, when the Parliament conſiſted of King, Lords, and Commons, would not be binding on a Diſſolution; but now that Power was united in the Commons, their Order was of greater Force; nor was it material whether Cauſe was ſhewn or not; the Parliament might commit without, and it was to be preſumed, they had Cauſe for ſo doing; and therefore moved he might be remanded to the Gatehouſe.

The Reply of the Priſoner's Counſel.

The Priſoner's Counſel replied, that Parliaments might, and did determine; and then their Orders determined, though their Acts remained in Force: But that this was not ſo much as an Order of Parliament; it was but a Warrant from the Speaker, that it had been ordained; that whoever ſaid the Parliament was in being, ſhould be adjudged guilty of an High Offence, and if it did not continue in being their Orders could be of no Force; that an Order of Parliament was not a Judgment of Parliament; that they were here in Court, *coram Protectore*, and moved again that he might be diſcharged; but the Court took Time to conſider of it.

The Court diſcharge the Priſoner.

The Priſoner being brought to the Bar again the eleventh of *February*, Chief Juſtice *Rolle* delivered the Opinion of the Court, *viz.* that the firſt Part of the Return was too general, it not mentioning what Books, or whoſe Books they were, or where or when they were publiſhed: That the ſecond Part of the Return was grounded upon an Order of Parliament which was determined with the Parliament; and that That Court was to take Notice when the Parliament was ſitting, and when diſcontinued, and which were Orders of Parliament, and which were Acts: That it was ever the Opinion of the Parliament themſelves, that upon a Diſſolution all their Committees and Orders ceaſe: That the Court did not reverſe the Order of Parliament; it was reverſed by their Diſſolution, and there was no viſible way to relieve the Priſoner but in that Court: Intervals of Parliament might be as long as they had been in ſome late Reigns; and if an Order of Parliament ſhould be binding on a Diſſolution, where was the Liberty of the Subject? The Court therefore was unanimous, that the Priſoner ought to be diſcharged; and a Rule was made.

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John Lilburn *refuſed the Benefit of an Habeas Corpus.*

John Lilburn had not ſo good Fortune; for though he brought an *Habeas Corpus*, directed to Colonel *Barkſtead* Lieutenant of the *Tower*, the Lieutenant refuſed to bring him into Court, alledging he had received a Counter Order from the Council of State, *That* Lilburn *ſhould not, be brought before the* Upper-Bench, *but abide the Pleaſure of the Houſe*; and *Lilburn*'s Counſel ſaid, that they had no Inſtructions from their Client, for they were not permitted to have Acceſs to him, and moved for an *alias Habeas Corpus*; but the Court would not grant it, and told them the Council of State had their Reaſons for what they did: Nor would *Oliver*, after he had turned the Parliament out of Doors, and aſſumed the Title of *Protector*, ever ſuffer *Lilburn* to be diſcharged or bailed; but detained him in Priſon by his ſole Will and Power, without giving any Reaſon for it to the Day of his Death.

Remarks on the Habeas Corpus *brought by* Streater, Lilburn, *&c.*

Theſe Proceedings ſufficiently ſhew how much the Condition of the Subject was mended by the Uſurpers; they murdered their King, under a Pretence of reſtoring Liberty and Property, and when they had poſſeſſed themſelves of Sovereign Power, became greater Oppreſſors, and more arbitrary than any of our Kings. We find their Attorney-General affirming, that Men might be impriſoned for Life, by a Vote or Order of the Commons without a Trial, and even without ſhewing any Cauſe of Commitment: To ſome they refuſed the Writ of *Habeas Corpus*, and others, when they were brought before the *Upper-Bench*, were told that this Court could not relieve them: *It was the Pleaſure of the Commons to commit the Priſoner, and he could not be releaſed by any other Power*, even after the Parliament was diſſolved; that the Commons might alter or ſuſpend the Laws as they pleaſed, and their Orders were no more to be diſputed than their Acts: In ſhort, the People were now Slaves to a ſmall Remnant of the Commons, as they were afterwards to *Cromwell*, and no Shadow of Law, Liberty, or Property remaining.

The

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The Trial of Gerhard and Vowel.

The Arraignment of SOMERSET FOX, JOHN GERHARD, and PETER VOWEL, for *High-Treaſon*, againſt the Protector, CROMWELL, before pretended *High-Court of Juſtice*, of which JOHN LISLE was *Preſident*, the 30th of *June*, 1654. 6 *Car.* II.

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The Charge.

THE Priſoners were charged with High Treaſon, in conſpiring againſt the Life of the Lord Protector, to ſubvert that pretended Government, bring in *Charles Stuart*, and proclaim him King; ſeize on the Protector's Guards, and involve the Nation in a Bloody War.

Fox confeſſes it.

Fox confeſſed the Charge; but *Vowel* for ſome time objected to the Juriſdiction of the Court, inſiſting he ought to be tried by a Jury, by *Magna Charta*, and the antient Laws of the Kingdom, as well as by the ſixth Article of the Protector's Inſtrument of Government; but this being over-ruled by their pretended Judges, the Evidence was produced againſt *Vowel* and *Gerhard*.

Objections to the Juriſdiction of the Court over-ruled.

The Evidence.

The Witneſſes depoſed, that the Priſoners, *Gerhard* and *Vowel*, were in a Plot to ſeize on the Lord Protector, and ſeveral of his Council, and murder them, and to bring in and proclaim *Charles Stuart*, Son of the late King; that this being reſolved on by the Conſpirators in *England*, Mr. *Hinſhaw*, one of their Number, and others, went over to *France* to acquaint *Charles Stuart* with the Deſign, without whoſe Approbation ſome of them refuſed to act: That Mr. *Hinſhaw* applied himſelf to Prince *Rupert*, who brought him to *Charles Stuart*, who was of Opinion the Conſpirators ought not to proceed in their Deſign, for three Reaſons; firſt, It would be diſhonourable to come in by ſuch Means; ſecondly, It did not ſeem feaſible; and thirdly, It was not Seaſonable at that Time: But that Prince *Rupert* afterwards encouraged the Deſign, and promiſed his Aſſiſtance.

That Mr. *Hinſhaw*, Mr. *Wiſeman*, and Mr. *Gerhard*, three of the Conſpirators, returning to *England*, *Hinſhaw* acquainted their Accomplices of the Overture that had been made to *Charles Stuart*, and affirmed that Prince *Rupert* had engaged to ſend over ten thouſand *Engliſh*, *Scots*, and *French*, to be commanded by the Duke of *York*, and land in *Suſſex* and other Places; and that there were Forces ready to join them.

That they had agreed to ſurprize the Protector with a Body of Horſe as he went from *Whitehall* to *Hampton-Court*, which he uſed to do every *Saturday* Night with a very ſmall Guard; they were to ſeize the Forces quartered in *Weſtminſter*, the *Meuſe*, *&c.* to ſurprize the *Tower*, raiſe an Inſurrection in the City of *London*, and Proclaim *Charles Stuart* there; and one *Billingſly*, a Butcher in *Smithfield*, was to raiſe a Party, and take the Troopers Horſes that were at Graſs in *Iſlington* Fields, which was ſaid to be a Project of *Vowel*'s.

The chief Witneſſes againſt the Priſoners, were Mr. *Wiſeman*, Mr. *Charles Gerhard*, and Mr. *Hudſon*, a blind Clergyman, all of them very honeſt Gentlemen, and were certainly engaged with the reſt to pull down the Uſurper, and bring in the King, but obliged to become Witneſſes to ſave their own Lives: However, they teſtified no more than they found the Uſurpers were very well acquainted with before.

The Priſoner's Defence.

Mr. *Vowel* and Mr. *Gerhard*, the Priſoners, denied the whole Charge at their Trials, and inſiſted that Treaſon (if the Facts were proved) could only be committed againſt a King; the Protector was a Perſon not known in our Law: To which *Prideaux*, the Attorney-General for the Common-wealth, replied, that the Laws which made it High-Treaſon to Conſpire the Death of the King, were ſtill in force; and that by King was meant any Supreme Governor, whether King, Queen or Protector, though the King only was named in the Act.

Liſle endeavours to ſhew the Wickedneſs of the Conſpiracy.

The Priſoners being afterwards brought into Court to hear Judgment, the Preſident *Liſle* made a Speech to them, wherein he endeavoured to ſhew the Wickedneſs of this Conſpiracy, and the Reaſonableneſs of the Puniſhment the Law had inflicted upon ſuch Offences: After which the Sentence was read againſt the three Priſoners, being of the following Tenor, *viz.*

The Sentence.

That the Court upon due Conſideration had of the Treaſons and Murders plotted and contrived by the Priſoners againſt his Highneſs the Lord Protector and the Commonwealth, and to raiſe a bloody War therein, did adjudge them to be hanged by the Neck till they were Dead.

Fox *pardoned.*

Somerſet Fox however was reprieved, on Account of his acknowledging the Offence, and pleading guilty; and Mr. *Gerhard*, upon his Petition, had the Manner of his Execution changed, from hanging to beheading; however, both Mr. *Vowel* and Mr. *Gerhard* were executed the ſame Day, namely, on *Monday* the 10th of *July*; the firſt being hanged in the Morning, on a Gallows erected for that Purpoſe at *Charing-Croſs*, and Mr. *Gerhard* was beheaded on a Scaffold at *Tower-Hill*, at Four in the Afternoon. They both gloried in their Loyalty to their Sovereign, declaring themſelves true Members of the Church of *England*, exhorting the People to remain ſtedfaſt in that Profeſſion, and in their Loyalty to their Prince. They did not deny but there had been ſome Diſcourſe how the Uſurpation might be demoliſhed, and the King reſtored; but affirmed, there was no Scheme actually agreed on for bringing theſe Things about.

Vowel *hanged.*

Gerhard *beheaded.*

Remarks on the Trial of Vowel *and* Gerhard.

They were both brave Men, and far from regreting the laying down their Lives for their Religion and their Country; and as the Uſurper knew them to be immoveably loyal, he was determined to make them Examples of his Vengeance, whether they were actually

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actually in a Plot to deſtroy him or not. And here we ſee how ſome Lawyers, whoſe Buſineſs it is to defend the Laws and Conſtitution, can proſtitute their Profeſſion to the vileſt Purpoſes, and make the Laws ſpeak a Language directly contrary to their true Meaning, and the Intent of the Legiſlators that made them; telling the People, that the Statutes that were made for the Preſervation of the King and Government, were to be interpreted to the Deſtruction of both; that the Uſurper, who had killed the King, and taken Poſſeſſion of his Throne, was their lawful Prince; and the preſent King and his loyal Subjects Rebels, by thoſe very Statutes that eſtabliſhed the Rights of both. Of all Kinds of Murder, thoſe that are committed under a Colour of Law are the moſt to be deteſted. How vile muſt thoſe Judges and Counſel appear therefore, who thus pervert Law and Juſtice, in order to deſtroy the beſt and braveſt Men! Surely the Names of *Liſle* and *Prideaux* muſt remain infamous to lateſt Poſterity, while thoſe of VOWEL and GERHARD, whoſe Blood they hunted after, ſhall ſhine in the Annals of Fame, as long as the Sun and Moon endures.

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The next Proceeding in the State Trials is the Proſecution of Dr. JOHN PORDAGE, Rector of *Bradfield*, in the County of *Berks*, for certain Heretical Doctrines, before Commiſſioners for ejecting ſcandalous and inſufficient Miniſters, *Octob.* 1654.

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Pordage's *Proſecution.*

The Charge againſt him.

THE principal Errors he was charged with were, his *denying the Divinity of* Chriſt, *and the Merits of his Paſſion*; *his maintaining that* Chriſt *was a Type, and but a Type, and not perfect*; which Charge the Doctor denied, nor was it well proved againſt him; and the Commiſſioners, on paſſing Sentence, declared, that they did not think him guilty of it; however, they thought fit to adjudge and decree, *That he ſhould be ejected out of the Rectory of* Bradfield, *and the Profits thereof.*

He is deprived.

Remarks on this Proſecution.

This ſhews how great a Power the Uſurpers conferred on their Commiſſioners for ejecting ſcandalous Miniſters; that they made them Judges of Hereſy and erroneous Doctrines, as well as of the Lives and Morals of the Clergy, and authorized them to ſuſpend and deprive whom they ſaw fit; and poſſibly the greateſt Crime the Doctor was guilty of, was his being poſſeſſed of one of the beſt Livings in *Berkſhire*, which the Uſurpers thought fit to beſtow on one of their Favourites. Thus we ſee thoſe Men who uſed to complain of the Juriſdiction of the Biſhops and Eccleſiaſtical Courts, ſet up a more arbitrary Tribunal, to take Cognizance of thoſe Matters, than ever was erected in *England* ſince the Reformation.

1655. 7 Car. II.

The Trial of Colonel JOHN PENRUDDOCK, for *High-Treaſon*, by a ſpecial Commiſſion of *Oyer* and *Terminer*, held at *Exeter*, the 19th of *April*, 1655. 7 *Car.* II.

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Penruddock's *Trial.*

Short Minutes of it only.

THIS which is denominated a Trial, is no more than ſome ſhort Notes, or Memorandums of the Colonel's, in which he relates, That he was arraigned together with *Hugh Grove*, *Richard Reeves*, *Robert Duke*, *George Duke*, *Thomas Fitz-James*, *Francis Jones*, *Edward Davis*, *Thomas Poulton*, and *Francis Bennet*, Gent. and that he, in Behalf of himſelf and his Fellow Priſoners, excepted to the Indictment, as not according to Law, deſiring Counſel might be aſſigned to argue the Errors it contained: That this being denied him, he pleaded *Not Guilty*, and having challenged twenty four of the Pannel, a Jury was ſworn; that he afterwards deſired a Copy of the Indictment, and Time to prepare for his Defence, which were refuſed, and he was obliged to enter upon his Defence immediately; wherein he urged, among other Things, that the Law knew no ſuch Perſon as a Protector, againſt whom the Treaſon was ſaid to be committed, and cited a Paſſage out of *Bracton*, who ſays, *Omnes ſub Rege, & ipſe nullo niſi tantum Deo*, &c. He cited alſo a Parliament Roll, where it is ſaid, *Whoever ſhall refuſe Aid to the King when War is levied againſt him, is guilty of Treaſon*; *and that all Men who adhere to the King in Perſonal Service, are freed from Treaſon by Law*: He thought it ſtrange therefore, they ſhould found their Indictment on a Statute which made his adhering to the King Treaſon; and deſired that the Statute might be read, but the Court would not indulge him ſo far. Then Mr. Attorney made a long Speech, aggravating the Charge againſt the Colonel, and telling the Jury, he had been four Years in *France*; that he held a Correſpondence with *Charles Stuart*, of whom he had learned the Popiſh Religion, and intended to introduce Popery; that *Charles Stuart* whom he would bring in, was a debauched lewd young Man, and would engage the Nation in another bloody Quarrel; in which he told the Jury, they with their Wives and Children would be deſtroyed, if the Cavaliers ſucceeded.

His Defence.

The Charge enforced.

To which the Colonel replied, Mr. Attorney had put on him a Bear-Skin, and now deſigned to bait him; but ſaid, he had ſurrendered

His Defence continued.

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dered to Captain *Crook* upon Condition of Quarter, and ought not after that to have been tried for his Life: He obſerved alſo that the Witneſſes produced againſt him had teſtified, that when King *Charles* II. was proclaimed at *Salisbury*, he had declared for the true Proteſtant Religion, the Liberty of the Subject and Privilege of Parliament; from whence he concluded it was obvious, that he was not for bringing in the Popiſh Religion.

Had he ſeen the Crown upon the Head of any Perſon, he ſaid he might have known what was Treaſon; but here was no ſuch Land-Mark, and he did not know how he could be guilty of what he was charged with: He adviſed the Jury not to be terrified by the Power and Splendor of the Court, and betrayed into a Sin of a deeper Die, than the Judges Scarlet, by drawing his Blood upon their Heads: He bid them look upon him as the Image of his Creator; for that Stamp of God's which was upon his Viſage, was not to be defaced without an Account given for it: He had inſiſted to be tried by thoſe Laws, which were eſtabliſhed by the Wiſdom of their Anceſtors; but he was tried by a Law, that was cut out by a rebellious Sword; and if they did not look well to it, the Sheets on which it was recorded, might ſerve ſome of them for Winding-Sheets: That the moſt they could make of the Matter was but a Riot; however, if they found it Specially, they would in ſome Meaſure acquit themſelves, and throw the Blood that was ſpilled upon the Judges: But the Jury, after a ſhort Receſs, brought him in GUILTY.

He is convicted.

On *Monday* the 23d of *April*, the Colonel was brought to the Bar again with twenty-ſix Gentlemen more, who had been tried in the mean Time, and the Court demanded what he had to ſay, why Sentence ſhould not be pronounced: He anſwered, he could have offered the Articles of Surrender, but did not think it proper in this Court: If the Protector would give him his Life, he ſhould return him Thanks; but if not, he ſhould forgive him and the Court. After which Sentence was pronounced on the Colonel and the reſt of the Priſoners, *That they ſhould be drawn, hanged, and quartered, as Traitors.*

Sentence paſſed.

Whereupon they obſerved, that this was but an odd way of performing Articles of Capitulation, whereby they had ſtipulated for Life, Liberty, and Eſtate.

The Colonel and Mr. *Grove*, had the Honour done them of being beheaded at *Exeter*; ſeveral other Priſoners were hanged at *Exeter* and *Salisbury*, and a great Number of Royaliſts were tranſported to the Plantations like convicted Felons.

He is executed.

This Proceeding, how imperfect ſoever, could not be omitted, becauſe it is the beſt we could meet with of the Sufferings of theſe brave Men: The Hardſhip Colonel *Penruddock* and the reſt of the Priſoners chiefly complained of, we find was, the Violation of the Articles of Capitulation, whereby their Lives, Liberties, and Eſtates, ought to have been ſecured. But the Uſurpers were now ſo firmly eſtabliſhed, that they feared no Retaliation; and as for the Injuſtice of putting theſe brave Cavaliers to death, it never troubled them in the leaſt: They had waſhed their Hands in the Blood of their Sovereign, and deſtroyed ſo many thouſands of his loyal Subjects in the Name of the Lord; that they looked upon ſuch human Sacrifices, (eſpecially thoſe of the beſt Blood in the Nation) as meritorious Offerings to their Maker: And here it may be proper to give ſome Account of the Occaſion of *Penruddock*'s Misfortune. The Nation it ſeems, became generally diſſaffected on *Cromwell*'s aſſuming the Protectorſhip, even the Independants as well as the Royaliſts: The Presbyterians were exaſperated to the laſt Degree, to find themſelves over-reached; and when they had, with the utmoſt Hazard, ſubverted the Monarchy, ſaw one of their own Number aſſume the ſole Government of the Nation, and exerciſe a more abſolute Tyranny than any Sovereign in *Europe*, not allowing them any Share in the Adminiſtration. While the People were in this Diſpoſition, the Royaliſts ſent over to the King (then at *Cologn*) for Commiſſions and Generals, to conduct an Inſurrection in his Favour: Whereupon his Majeſty ſent them *Wilmot* Earl of *Rocheſter*, and Sir *Joſeph Wagſtaffe*, and went himſelf in Diſguiſe to *Fluſhing* in *Zealand*, that he might be ready to embark for *England* on the firſt Notice of their Succeſs. *Wilmot* and *Wagſtaffe* finding the People generally diſaffected on their Arrival, the former went into the North of *England*, and *Wagſtaffe* into the Weſt; but their Deſigns were fruſtrated by the Treachery of one *Manning*, who having ſerved King *Charles* I. afterwards entered himſelf in the Service of the Uſurpers, and was employed by *Thurloe*, Secretary to *Cromwell*, as a Spy in the Family of King *Charles* II. From this Man it was *Cromwell* received Advice that the King was gone to *Zealand*, in Expectation of an Inſurrection in *England*, and named ſeveral Royaliſts as concerned in a Conſpiracy againſt him; which occaſioned their being taken up, and put *Cromwell* upon his Guard: But *Manning* was not acquainted with the Meaſures that had been concerted, or the particular Perſons that were to conduct the Enterprize. However *Cromwell*, upon the Intelligence he had received, cauſing ſeveral Leading Men among the Royaliſts to be apprehended, and narrowly watching the Motions of the reſt, the Deſign was ſo far defeated that *Wiltſhire* and *Hampſhire* were the only Counties which found it practicable to appear in Arms, and here they were not very numerous. The Royaliſts of *Wiltſhire* amounting to two hundred Horſe, among whom were Colonel *Penruddock*, *Grove*, *Jones*, *Mompeſſon*, *Maſon*, and other Perſons of Diſtinction, led by Sir *Joſeph Wagſtaffe*, aſſembled the 11th of *March* and came to *Salisbury*, where the Aſſizes was then held, about five in the Morning, and ſurprized *Rolls*, the Uſurper's Lord Chief Juſtice, Mr. Juſtice *Nicholas* and the High Sheriff, in their Beds, and locked up all the Stables which were then full of Horſes, in order to mount their Friends in Town; and *Wagſtaffe*, it is ſaid, would have hanged up the Judges and Sheriff, in order to render his

Remarks on Penruddock's Trial.

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Party desperate; but *Penruddock* and the Country Gentlemen, would not consent to it; and having spent three or four Hours in Town, in Expectation of being joined by the *Hampshire* Men, they retired towards *Devonshire*, but so fatigued and dispirited, that Captain *Crook* pursuing them with a Troop of Horse, they surrendered to him, on Condition their Lives, Liberties, and Estates should be secured; but *Wagstaffe*, *Mason*, and *Mompesson*, not trusting to the Capitulation, made their Escapes beyond Sea: In the mean Time *Wilmot* finding it impracticable to assemble the Royalists in the North with any Prospect of Success, advised them to remain quiet, and return to his Majesty at *Cologn*; where *Manning*'s Treachery being discovered, the King ordered him to be shot to death.

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1656. 8 Car. II.

Proceedings against JAMES NAYLOR, before a Committee of the Commons, for Blasphemy and other Misdemeanors in *December*, 1656. 8 *Car.* II.

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Naylor's *Trial.*

The Charge.

THE Prisoner was charged, First, with assuming the Gestures, Words, Honour, Worship, and Miracles of Christ. Secondly, with assuming the Names, and incommunicable Attributes of our Blessed Saviour.

Some Account of the Man.

James Naylor, was born at *Ardisloe* near *Wakefield* in *Yorkshire*, and entering himself in the Rebels Army, at the Beginning of the Civil Wars, became Quarter-Master in Lieutenant-General *Lambert*'s own Troop; but falling Sick in *Scotland*, he returned Home, and became a Member of an Independant Congregation; from which he was excluded for Blasphemy, and giving out that it was lawful to lye with any Woman of the same Sect; and his Familiarity with one Mrs. *Roper*, a married Woman. From *Yorkshire* he went to *Cornwall*, to visit the Quakers there, and was committed to *Exeter* Goal as a Vagrant, with several of that Sect who attended him; but being set at Liberty, by an Order of the Usurper's Council, he and his Disciples began a kind of solemn Procession from *Exeter* to *Bristol*, in Imitation of our Saviour's riding to *Jerusalem*.

The Evidence against him.

The Witnesses deposed, That *James Naylor* was set upon an Ass which was led by a Woman, and in all the Towns they passed through in their Way to *Bristol*, his Disciples, spread their Garments, and sung, *Holy, Holy, Holy*, before him, and said they were moved by the Spirit so to do: And *Naylor* himself said, That Garments were spread, and Praises sung to the Lord before him, at his Entrance into *Bristol*; and said, It was as the Lord put into their Hearts; it was done to the Praise of his Father, and he might not refuse any Thing that was moved of the Lord; he did think the Father commanded them to do it: And being asked, Who they meant by *Holy*, &c. he answered, *They were of Age, let them answer for themselves:* He had also the Description of our Saviour's Person about him; and it was observed by the Committee, that his Person much resembled the Picture commonly drawn for our Blessed Saviour; and he affected to give the like Answers that Christ gave; as when he was asked, How he could live without Food fifteen or sixteen Days? (as he pretended he had) He answered, *Man liveth not by Bread alone, but by every Word that proceedeth out of the Mouth of God*; and in another of his Answers he said, *If they had known the Father, they should have known him also.* It was testified also, that several Women kneeled before him, and kissed his Feet; and one *Dorcas Erbery* deposed, That she was dead two Days in *Exeter* Goal, and *Naylor* laid his Hands on her, and raised her up: And when the Committee demanded of the Prisoner, If he raised her from the dead? he answered, *I can do nothing of myself, but there is a Power in me from above:* And being asked, Who bore Witness of him? he answered, *The Scriptures do bear Witness to the Power which is in me, which is everlasting*; and that it was the same Power, whereof they read in Scripture, that had raised the dead, according to the Power manifest: That as to what *Dorcas Erbery*, or any other, attributed to him as a Creature, that had Beginning and Ending, he utterly denied; but what any Person saw of God in him, that he did not deny: That the same Power which did raise the dead, which they read of in Scripture, the same Christ, the same anointing according to the Measure of him, was manifest in him, (the Prisoner) and no other: And being asked, If any prayed to him? he answered, as a Creature, he did disown it. A Letter from one *Hannah Stranger* being found about him, wherein she gives him the Title of *The fairest of ten thousand*; he said, if she meant it of what was visible, he denied the Title; but as spoken of that which the Father had begotten in him, he durst not disown it; for that was beautiful wherever it was begotten: In the same Letter *Stranger* gave him the Title of *The only begotten son of God:* And it being demanded, If he was the only bogotten Son of God? he answered, He was the Son of God, and that the Son of God was but one.

In another Letter from *Jane Woodcock*, she gave him the Title of *The Prophet of the most High*; and *Naylor* himself at his first Examination, averred, That he was the Prophet of the most High God; but afterwards he only said, He was *a* Prophet of the most High God.

In a Letter from *Thomas Simmons*, he was stiled *The King of* Israel; and being asked, If he assumed that Title? he answered, *He had no Kingdom in this World; yet a Kingdom he had, and he that had redeemed him, had redeemed him to be a King for ever*; but he denied any

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any ſuch Thing as a Creature, further than as God manifeſted in the Fleſh; and if they gave that Title to Chriſt in him, then he owned it. In another Letter from *Hannah Stranger*, ſhe gave him the Title of *The everlaſting Son of Righteouſneſs*; and *Naylor* being examined about it ſaid, God manifeſt in the Fleſh, he did witneſs and might not deny; and that where God was manifeſted in the Fleſh, there was the everlaſting Son of Righteouſneſs. *Jane Woodcock*, in another Letter to *Naylor*, ſays, *He was ſent to judge and try the Cauſe of* Iſrael; and at his Examination he averred, He was ſent to try the Cauſe of *Iſrael*, by him who made all Creatures, who had ſent his Spirit and his Son into him, to try the Cauſe; but ſaid, he was no judge of carnal Matters.

In the Poſtcript to *Hannah Stranger's* Letter, her Husband wrote, *Thy Name ſhall no more be called* James *but* Jeſus; and *Naylor* on his Examination ſaid, If they gave it to any other but the Son of God that was in him, he denied the Name; but he underſtood they gave that Name to the Jeſus, the Chriſt, that was in him: That he did not call himſelf by that Name, but what his Father had publiſhed, was another Thing.

In another Letter from *Martha Simmons* to *Naylor*, ſhe ſtiles him, *Thou well beloved Lamb of God, in whom the Hope of* Iſrael *ſtands*; and *Naylor*, at his Examination ſaid, If he were not his Lamb, he ſhould not be ſought to be devoured: And being asked, If the Hope of Iſrael did ſtand in him? he anſwered, It ſtands only in Chriſt, and as Jeſus Chriſt is known in me: And being asked again, Are you he, in whom the Hope of *Iſrael* ſtands? he anſwered, *Chriſt in me, the Hope of Glory:* Being queſtioned further concerning the Titles given him in the Letters, he ſaid, He did not deſign they ſhould have ſeen them, becauſe he knew there were Things in them, that many could not bear; but now he ſaw his Father purpoſed they ſhould not be hid. Being asked, Whether he owned or diſclaimed the Attributes? he anſwered, If they had it from the Lord, what was he that ſhould judge it? But if they were aſcribed to the Creature, then it was reproveable: If they did it to the Lord, he durſt not reprove it; adding, that he looked upon the Honour and Worſhip given him, to be to the true Honour of Chriſt, or elſe he would utterly have denied it.

It was further depoſed by *John Baynham*, Deputy-Serjeant to the Commons, That while *Naylor* was in his Cuſtody, he uſually ſat in a Chair, and his Diſciples, Men and Women, kneeled about him, or ſat on the Ground when they were weary of kneeling, ſinging, *Holy, Holy, to the Almighty, to the true God and great God, and Glory to the Almighty*, &c. and this they did all the Day long, but *Naylor* never ſung himſelf.

That there was a great Reſort of other People to him, who in like Manner kneeled before him; and that *Naylor* never ſhewed any Diſlike, or reproved them for it.

Naylor's Defence.

It being demanded of *Naylor*, what he had to ſay in his Defence, he anſwered, That he abhorred that any Honour which was due to God, ſhould be given to him, as he was a Creature; but it pleaſed the Lord, to ſet him up as a Sign of the coming of the Righteous One: And as to what had been done in paſſing through Towns, he was commanded by the Power of the Lord, to ſuffer ſuch Things to be done to the Outward Man as a Sign; but he abhorred any Honour as a Creature.

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Upon the Whole, the Committee reſolved that the Charge was fully proved againſt the Priſoner; who being ſent for to the Houſe the ſixth of *December*, and commanded to kneel, he refuſed; and ſtanding with his Hat on at the Bar, the Serjeant, by the Speaker's Order, took it off; and being asked, If his Name was *James Naylor?* he anſwered, He was ſo called ever ſince he could remember; and acknowledged he had given the Anſwers abovementioned to the Committee: After which he was commanded to withdraw; and it was reſolved to agree with the Committee, firſt, That *Naylor* was guilty of horrid Blaſphemy; ſecondly, That he was a grand Impoſtor and Seducer of the People: And the Queſtion being put, That it be Part of his Puniſhment to have his Hair cut off, it paſſed in the Negative: But on the 17th of *December*, the following Sentence was agreed on, (*viz.*) That *James Naylor* be ſet in the Pillory in the *Palace-Yard* on *Thurſday* next, and be whipped from thence to the *Old Exchange*, by the Hangman; where, on the *Saturday* following, he ſhall likewiſe be ſet in the Pillory; and in each Place wear a Paper, ſignifying his Crimes: That at the *Old Exchange*, his Tongue ſhall be bored through with a hot Iron; and he ſhall be there alſo ſtigmatized in the Forehead with the Letter *B*, and afterwards conveyed to *Briſtol*, and ride into and through the ſaid City, on a bare Horſe's Back, with his Face to the Tail, and be publickly whipped the next Market-Day after he comes thither; and afterwards be committed to *Bridewell* in *London*; and reſtrained from the Society of all People; and have neither Pen, Ink, or Paper, or any Relief, but what he gains by his Labour.

He is convicted.

His Sentence.

The Execution of it.

While this Sentence was executing on the Priſoner in the Pillory, his Followers adored him, and afterwards licked his Wounds, and kiſſed his Feet. When he came firſt to *Bridewell* he faſted three Days, but then was glad to eat, and work to keep himſelf alive; while another Quaker, attempting to faſt forty Days in Imitation of our Saviour, was ſtarved.

Remarks on Naylor's Trial.

Theſe were ſome of the happy Conſequences of the Subverſion of the Church and State: Sound Religion, and ſound Politicks, were entirey now baniſhed the Nation; the People were divided into a Multitude of impious and and blaſphemous Sects, every one of which propoſed the new-modelling of the State, as well as the Church, after the Whimſies of their own Brains; and we ſee how tenderly Blaſphemy and Idolatry were then dealt with: We do not find any one of them puniſhed for it, except this *James Naylor:* And whether his Sentence was adequate to the Offence, I leave the World to judge.

Quakers,

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Quakers, Fifth-Monarchy Men, The Family of Love, and every Enthuſiaſtical Opinion was tolerated; only the Diſciples of the National Church and the Loyaliſts, were perſecuted with Rigour; and as to theſe, the Powers then in Being, publiſhed a Declaration, to let them know, That they would not allow them the Favour of a Trial, if any of them were ſuſpected of conſpiring to reſtore the Conſtitution, but they would *believe* them all guilty; and put them to death, without ſo much as ſuffering them to have the Benefit even of the *Forms of Law*. 1656. 8 Car. II.

1656. 8 Car. II.

The Trial of MILES SINDERCOME, *alias* FISH, for High-Treaſon, at the Upper Bench, *Weſtminſter*; the 9th of *February*, 1656. 8 *Car.* II.

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Sindercome's *Trial.*

The Indictment.

MILES *Sindercome*, was indicted for High-Treaſon, in conſpiring againſt the Life of the Lord-Protector, to ſubvert the Government of the Common-wealth, and to levy War againſt the ſame. The Overt-acts laid of the Conſpiracy were, That he, with one *William Boyce*, and others his Accomplices, hired a Houſe in *Weſtminſter*, to which they carried Arms and Ammunition, with an Intent to murder the Protector; that they alſo provided Horſes, and took another Houſe at *Hammerſmith* for the ſame purpoſe; and that they brought Gunpowder, Brimſtone, and other combuſtible Materials, into the Chapel of *Whitehall*, and ſet Fire to the ſame, to the great Danger and Diſturbance of the Protector.

Notes only of the Evidence.

All the Account the Editor has given us of this Trial, is ſome ſhort Notes that ſeem to have been taken by a Friend of the Uſurper's; who relates, That *Toope*, one of the Priſoner's Accomplices, depoſed, That the Priſoner had made him Offers of Money and Preferment, to join with him in murdering the Protector; That the Deponent, (who was a Soldier in *Cromwell*'s Guards) was to give Notice when the Protector went abroad, and what Part of the Coach he ſat in; he gave Evidence alſo of their buying up fleet Horſes; of the Priſoner's lodging Gunpowder, *&c.* in the Chapel of *Whitehall*; and his Reſolution to kill the Protector, if the Fire did not take.

That *Cecil*, another of the Conſpirators, depoſed, That the Priſoner engaged him in the Deſign of aſſaſſinating the Protector; and that they were upon the Road five or ſix Times, in order to effect it, particularly once in *Hyde-Park*, when *Toope* gave them Notice the Protector went abroad; That they took a Houſe at *Hammerſmith* alſo, and lodged arms in it on Purpoſe to ſhoot him as he came by; and that one of their Guns would carry 12 Carbine Bullets and a Slug; and he deſcribed the Fire works prepared for burning *Whitehall*.

He depoſed alſo, That Forces were expected from *Spain* and *Flanders*, to join the Conſpirators, and that great Part of the Fleet would revolt; and believed that Colonel *Sexby* was the principal Agent at *Bruſſels*: That there were thirty or forty engaged to aſſaſſinate the Protector; but it was ſo ordered, that not any one ſhould know the others were in the Plot, until the Matter was ripe for Execution.

He depoſed further, That Houſes were taken in *Weſtminſter*, and Arms lodged in them, to kill the Protector as he went to the Parliament-Houſe: That the Priſoner, *Cecil* the Deponent, and *Boyce*, actually went out into a Yard near *Weſtminſter-Abbey*, to ſhoot the Protector, as he paſſed from the *Abbey* to the Parliament, in the *Painted Chamber*; but were prevented by ſome Accident.

The Witneſſes depoſed further, That this Attempt not ſucceeding, they provided fleet Horſes to kill him as he rode out; and attempted the firſt Time, the latter End of *September*; a ſecond Time, as the Protector went the Back-Way from *Kenſington* to *London*; a third Time, when he went to *Hyde-Park* in his Coach; a fourth Time, when he went to *Turnham-Green*; and a fifth Time, when the Protector alighted from his Horſe in *Hyde-Park*, but were prevented then by *Cecil*'s Horſe being out of Order: That *Sindercome* rode out once alone to kill him; and all theſe Attempts failing, they reſolved to fire *Whitehall*.

The Priſoner's Defence.

Sindercome abſolutely denied he knew of any Plot; and inſiſted, as others had done, that no Treaſon could be committed againſt the Perſon they ſtiled Protector: To which the Uſurper's Chief Juſtice *Glynn*, and Juſtice *Warburton*, replied, That to compaſs the Death of the Chief Magiſtrate, by what Name ſoever he was called, was High-Treaſon; and that he (the Protector) was *the Fountain of Juſtice*, in whoſe Name all Writs run, and all Commiſſions and Grants were made: And the Jury finding him GUILTY, the following Judgment was paſſed on the Priſoner, *viz.*

He is convicted.

The Sentence paſſed.

That he ſhould be drawn upon a Hurdle from the Tower *to* Tyburn, *and there be hanged until he was half dead, and then being cut down, his Bowels ſhould be taken out, and burnt in his Sight; his Body divided into four Quarters, and diſpoſed of as his Highneſs the Lord Protector ſhould think fit.*

He is found dead in his Bed.

Whether *Sindercome* poiſoned himſelf, becauſe he apprehended the Sentence would be rigorouſly executed, or to avoid the Ignominy of the Execution; or whether he was poiſoned, or otherwiſe privately murdered, by the Direction of the Uſurper, leaſt he ſhould diſcover more of his Villainy, does not fully appear: But it is certain he was found dead in his Bed, the Night before he ſhould have been executed; whereupon the Coroner ſat upon his Body, and ſeveral Witneſſes were examined, as to the Manner of the Priſoner's Death.

The Coroner ſits on him.

Sir

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The Evidence before the Coroner.

Sir *Richard Napier*, Doctor of Phyſick, and Doctor *Fern*, Reader of Anatomy in *Greſham-College*, depoſed, That being deſired by Sir *John Barkſtead*, Lieutenant of the *Tower*, to ſee the Head of *Miles Sindercome* opened (his Body having been opened before their coming by the Surgeons) and make their Obſervations thereon; they found the Brain much inflamed, red, and diſtended with Blood, ſwollen as full as the Skull could well hold; beſides much grumous and clodded Blood out of the Veins, which muſt be the Effect of ſome very violent and preternatural Cauſe. Yet were they not able poſitively to determine what that was, or whence it proceeded, the Motion being much more ſudden and violent than that of Apoplexies, and other known Diſeaſes of the Brain, except when cauſed by Contuſion, and other the like extraordinary Violences.

Charles Stamford and *Nicholas Brethers*, Wardens of the Surgeons Company, and *Laurence Loe*, another able Surgeon, depoſed, That being ordered to open the Body of *Miles Sindercome*, Priſoner in the *Tower*, they could not find out, or diſcover any the uſual Symptoms, or Effects, accompanying the taking of known and ſharp Poiſons, cauſing ſudden Death; but by the Diſtenſion and Swelling of the Brain and Veſſels in the Head, with much coagulated Blood, which they found there: Their Opinions therefore were, That the Priſoner had cauſed the ſame by ſome extraordinary Means, for the haſtening of his Death.

Under the Cloſe-Stool, in *Sindercome*'s Room, was found, after he was dead (as it is ſaid) the following Paper, ſubſcribed with his own Hand, *(Viz)*

A Note ſaid to be found in the Priſoner's Room.

GOD knoweth my Heart, I do take this Courſe becauſe I would not have all the open Shame of the World executed upon my Body: I deſire all good People not to judge amiſs of me; for I do not fear my Life, but do truſt God with my Soul. I did this Thing without the Privity of any Perſon in the World; I do before God and the World clear my Keeper, my Siſters, Mother or Brother, or any other of my Relations; but it was done alone by my ſelf: I ſay by me,

February. *The 13th Day*, 1656.

MILES SINDERCOME.

Further Evidence.

Elizabeth Herring, Wife of *William Herring* Mariner, and Siſter to *Miles Sindercome*, depoſed, That ſhe went ſeveral Times to ſee her ſaid Brother in the *Tower*, and that going to him on *Monday* the 9th of *February*, after he had received Sentence of Death, and lamenting his Condition, he ſaid, before they ſhould have his Life ſo ſhamefully (meaning the Lord Protector, ſhe believed) he would poiſon himſelf, and deſired her to procure him ſome Poiſon, which ſhe refuſed; and that coming every Day after to ſee him while he lived, he did not mention Poiſon any more, or ſpeak any Words of Diſcontent, as if he intended to deſtroy himſelf; nor did he complain of any Sickneſs, or Diſeaſe, that he was troubled withal; That on *Friday* the 13th of *February*, the laſt Day he lived, ſhe perſuaded him to confeſs, who had a Hand in the Plot againſt the Lord Protector; and told him, if he would confeſs, his Highneſs would grant him his Life, and wiſhed him to truſt to God and Man. To which the ſaid *Sindercome* replied, He would have it under black and white, and *that he would truſt no Man:* That about Eight at Night ſhe left him in good Health, as ſhe thought; and that he found in his Conſcience he had made his Peace with the Lord: ----- Denied ſhe ever brought him Poiſon, or any other Thing to deſtroy him; yet confeſſed, that on the ſaid *Friday* Night before he died, ſhe did ſay, ſhe deſired with all her Heart to ſee him die a natural Death in that Chamber.

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Two other Women, who viſited *Sindercome* after Sentence, depoſed, That they did not know of any Poiſon brought him; nor did they ever hear him ſpeak any Words as if he intended to deſtroy himſelf by Poiſon, or otherwiſe.

The Evidence of the Officers that guarded him.

William Foſter, one of the Officers appointed to remain in the Chamber, where *Sindercome* was impriſoned, depoſed, That on *Friday*, the 13th of *February*, about Nine at Night, the Priſoner deſired him and four more, that were then in his Room, to withdraw out of the Chamber, while he went to Prayers, which they did; and within a Quarter of an Hour he called them in again, and took a Book in his Hand to read, after which he ſaid he would go to bed, and that was the laſt Night he ſhould go to Bed; and laying himſelf down, fell aſleep, and ſnored, as the Examinant thought; but deſiring *Daniel Steer*, his Keeper, to take a Candle and ſee how the Priſoner lay in his Bed, *Steer* ſaid he was almoſt dead; however he lay Speechleſs for two Hours after, and then died.

Philip Brown, another of the Officers appointed to wait in the Priſoner's Chamber, depoſed, That he was at Dinner with *Sindercome* on the 13th of *February*, and he ſaid, That was the laſt Meal he ſhould ever eat: And that afterwards two of the Priſoner's Siſters, a Couſin, and another Woman, came to ſee him, and would have perſuaded him to confeſs who brought him into thoſe Troubles, and he anſwered, *To whom ſhould he confeſs? He could not expect Mercy from him who was reſolved to give him none:* Adding, That *Cromwell* ſaid to him when he was taken and brought before him, *Sindercome, Have I caught you? You that have ſought many ways to take my Life, I will have no Conſideration at all of thy Life.* That when *Sindercome* had repeated theſe Words, he fell in a great Paſſion, and ſaid he might go and accuſe the Lord *Fleetwood*, the Lord *Lambert*, Sir *John Barkſtead*, Sir *Thomas Pride*, or any other Member of the Army, if he was minded to deſtroy innocent Blood. That about Seven the ſame Evening this Examinant received Orders from the Major, That *Sindercome* ſhould have ſome Time allowed him apart to prepare himſelf, if he deſired it; and thereupon the Examinant retired

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tired out of the Chamber, and left him alone; and ſtanding at the Door, a quarter of an Hour after, he ſaw the ſaid *Miles* kneeling by the Bed-ſide; but ſoon after this, one of the Centinels, who ſtood at the Chamber-Door, told the Examinant, that *Sindercome* did cough and kick, as if he was vomiting; and opening the Door, he found the Priſoner walking about the Room. That Captain *Foſter*, and Captain *Sharp*, who were ordered to be there that Night, then came into the Room; and about Nine at Night, *Sindercome* deſired all the Company to withdraw out of the Room, and within a quarter of an Hour called them in again, took a Book in his Hand to read, and then ſaid he would go to Bed, That was the laſt Night he ſhould go to Bed; and that a little Time after he lay down they diſcovered he was dying, as the laſt Witneſs depoſed.

Daniel Steer, the Priſoner's Keeper, depoſed, That *Sindercome* being a Priſoner in the *Tower*, the latter End of *Janury*, told the Examinant, If he would be faithful to him, he would give him the Value of his Place, were it worth two hundred Pounds, deſiring he would provide him *(Sindercome)* a Black Suit of Cloaths, a Peruke, and ſhort Dagger, and paſs him out of the Water-gate, and he would kill any Man that ſhould oppoſe him: That the Priſoner, coming back to the *Tower* from his Trial, the 9th of *February*, was in a great Paſſion, and ſaid they ſhould not have their Ends, and deſired the Examinant to help him to ſome Poiſon, that he might make away with himſelf; and refuſing, the Priſoner applied himſelf to his Siſter, *Elizabeth Herring*, who was preſent, to bring him ſome Poiſon, but ſhe fell a crying; and afterwards the Priſoner and the ſaid *Elizabeth* had ſome private Diſcourſe, which the Examinant did not hear: That his Siſter being gone, the Priſoner demanded if he could not poſſibly help him to make his Eſcape, and if he could, he would make Two Hundred Pounds good to him that Night; and if the Examinant would go along with the Priſoner, he would make that 200 *l.* Seven Hundred Pounds, or what he ſhould deſire; but the Examinant replied, it was impoſſible for him to make his Eſcape, there was ſuch a ſtrict Guard kept about him. That on the 13th of *February*, about Ten at Night, the Examinant was in the Priſoner's Chamber, together with Captain *Sharp*, Captain *Foſter*, Enſign *Browne*, and Serjeant *Stock*; and that the Priſoner deſired them to withdraw, called them in again within a quarter of an Hour, went to Bed, and died as the former Witneſſes had depoſed; but that he knew of no Poiſon, or any other Means the Priſoner uſed to take away his Life.

Captain *Henry Sharpe*, who was in *Sindercome*'s Room, on *Friday* the 13th of *February*, confirmed the Evidence the former Witneſſes gave; adding, that after the Priſoner's Siſter, and the reſt of the Women were gone, they cauſed the Room and the Bed to be ſearched, leſt any Thing ſhould be left there for the Priſoner to do himſelf a Miſchief withal; but nothing could be found.

Elizabeth Sindercome, of *Deptford*, Widow, the Priſoner's Mother, depoſed, That ſhe went three Times to ſee her Son while he was Priſoner in the *Tower*; and that ſhe did not know of any violent Means uſed by him, or any other, to haſten his Death: That he told her, the laſt Time ſhe was with him, he was prepared to die, and *ſhe ſaw him no more.* But about Twelve a Clock on *Friday* Night the 13th of *February*, ſhe *heard* ſhe was ſent for, and *heard* he was very ſick and weak of which Sickneſs he died preſently after.

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The Coroners's Inqueſt doubtful, and adjourn.

The Coroner's Inqueſt having conſidered the aboveſaid Depoſitions, could come to no Reſolution, as to the Cauſe of his Death, and therefore adjourned.

They meet, and adjourn again.

On the 16th of *February*, they ſat again, when it is ſaid they were of Opinion, that the Priſoner, by ſome extraordinary Means, had been the Occaſion of his own Death, and believed the ſame to be by Poiſon; but adjourned however until Seven the next Morning, at the Lord Chief Juſtice's Houſe, where having received his Lordſhip's Direction, they gave in their Verdict, *That the ſaid* Miles Sindercome, *on the 13th* of February, *about nine at Night, ſnuffed up a certain poiſoned Powder, through his Noſe, and by the Strength and Operation of the ſaid Poiſon, he, the ſaid* Miles Sindercome, *within three Hours after, died; and ſo they found that he did feloniouſly kill and murder himſelf.*

Directed by the Chief Juſtice. Find he poiſoned himſelf.

Whereupon the Coroner iſſued his Warrant to the Conſtables and Headboroughs within the Liberty of the *Tower*, requiring them to bury the Corpſe of the ſaid *Miles Sindercome* in the common Highway; and it was accordingly, the ſame 17th of *February*, drawn to the open Place on *Tower-Hill* at a Horſe's Tail, with the Head forward, and thrown into a Hole dug under the common Scaffold for Execution, ſtark naked; and a Stake, ſpiked with Iron, driven through the Corpſe; that Part of the Stake, that remained above Ground, being plated with Iron.

Lord Clarendon's Account of Sindercome.

The Lord *Clarendon*, ſpeaking of *Sindercome* in his Hiſtory of the Grand Rebellion, ſays he was a very ſtout Man, and had been much in *Cromwell*'s Favour, but afterwards became his Enemy, and had twice or thrice, by wonderful and unexpected Accidents, been diſappointed in the Minute he made ſure to kill him; and that when *Cromwell* cauſed him to be apprehended, his Behaviour was ſo reſolute at his Examination and Trial, as if he thought he ſhould ſtill be able to do it; and it was manifeſt he had more Aſſociates who were undiſcovered, and as reſolute as himſelf; and though *Cromwell* had got him condemned to die, the Fellow's Carriage and Words were ſuch, as if he knew very well how to avoid the Judgment; which made *Cromwell* believe, that a Party in the Army, would attempt his Reſcue: Whereupon he gave ſtrict Charge, that he ſhould be carefully looked to in the *Tower*, and three or four of the Guards always with him Day and Night. At the Day appointed for his Execution, thoſe Troops *Cromwell* were moſt confident of, were placed upon *Tower-Hill*, where the Gallows was erected; but when the Guard called *Sindercome* to riſe in the Morning, they found him dead in his Bed, which gave

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gave Trouble exceedingly to *Cromwell*; for beſides that he hoped, at his Death, to avoid the utmoſt Rigour of it, he would have confeſſed many of his Confederates; he now found himſelf under the Reproach of having cauſed him to be poiſoned; as not daring to bring him to publick Juſtice; *nor could he ſuppreſs that Scandal.* This Accident perplexed *Cromwell* very much; and though he was without the particular Diſcovery he expected, he made a general Diſcovery by it, that he himſelf was more odious in his Army, than he believed he had been. See *Clarendon*'s *Hiſtory*, Vol. III. p. 646, *& Seq.* 8vo. Edit.

The Account the Uſurper thought fit to give of this Event.

In a Pamphlet entitled, *A further Narrative of the Paſſages of theſe Times in the Common-Wealth of* England, is recited, *A brief Relation of the late dangerous Plot*, publiſhed, as is evident from the Face of it, by the Uſurper's Authority and Direction; in which it is ſaid, "The principal Perſon employed in the traiterous Deſign, for the Deſtruction of his Highneſs's Perſon, was a notable deſperate Fellow named *Sindercome*; one who heretofore, had been a Quarter-Maſter under Sir *John Reynolds* in the Army; and was, about two Years before caſhiered by General *Monk*, among others in *Scotland*: He aſſociated to himſelf one *Cecil*; and many others were engaged in the Buſineſs: For the carrying on their Work, they held Correſpondence with ſome in *Flanders*, received Directions from thence, from Time to Time; and for their Encouragement *Don Alonzo*, the late Ambaſſador of *Spain* in *England*, returned them over Sums of Money, with which they were enabled to proceed."

In the ſame Pamphlet entitled, *A further Narrative, &c.* is recited alſo a Narrative, which it is ſaid, Colonel *Edward Sexby* delivered to Sir *John Barkſtead* Lieutenant of the *Tower*, the 12th of *October* 1657; wherein they make Colonel *Sexby* ſay, "Sir *John*, I ſent to you, to tell them that I am guilty of the whole Buſineſs of *Sindercome*, as to the Deſign of killing the Lord Protector, *&c.* And to that Purpoſe I furniſhed *Sindercome* with about 500 *l.* in Money, and alſo with Arms; and tied him to an Engagement, that he ſhould not reveal the Deſign": Adding, "The Letters they have of mine, they could not prove to be mine; but by my own Confeſſion, which I now confeſs and acknowledge, are mine. And that I was with *Charles Stuart*, and acquainted him, That I was an Enemy to the Lord Protector: And I alſo declare, That I received a large Sum of Money from the *Spaniards*, to carry on the ſaid Deſign, and to make what Confuſion I could in *England*, by endeavouring the killing of the Lord Protector, and by what other Means I had in Deſign: And to that End, the better to effect it, I came into *England* in a diſguiſed Habit, and was the Principal in putting on others in the ſaid Deſign: I was the only Man that ſet on *Sindercome* to kill the Lord Protector. He owned the Book, called *Killing no Murder*, and ſaid he was ſtill of that Judgment; and yet they make him ſay, it was both fooliſhly and knaviſhly done in that Book, to charge the Lieutenant of the *Tower* touching *Sindercome*'s Death.

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Colonel Sexby *died in the* Tower *the* 13*th of* January, 1657, *almoſt a Year after* Sindercome's *Death.*

Some Account who Sindercome *was.*

Miles Sindercome, was the Son of --------- *Sindercome* of *Deptford* near *London*, and it is probable his Father was a Seaman, a great many of the Inhabitants of that Town being ſuch, and his Siſter appearing to be married to one *Herring* a Seaman, of that Place: However the Son (it is related) was Apprentice to a Surgeon at St. *Katherine's* near the *Tower*; and went into the Rebels Army, when the Civil Wars broke out, where he arrived at the Poſt of Quarter-Maſter of Horſe, and was a great Favourite of *Cromwell*'s, till he found him averſe to his aſſuming Sovereign Power.

Having thus ſtated the Facts, as well as I was able, from the Materials before me; I ſhall now proceed to make ſome Remarks on the Trial and Death of *Sindercome.*

Remarks on Sindercome's *Trial and Death.*

I do not find any body doubts of *Sindercome*'s Deſign to aſſaſſinate the Uſurper *Cromwell*; all the Diſpute was, whether ſuch a Conſpiracy was High-Treaſon, or rather, whether it was not a laudable Attempt, to endeavour to take away the Life of a Man, who had invaded the Liberties of his Country, which he pretended to defend; of one who had murdered his Sovereign; abſolutely deſtroyed the Conſtitution; and uſurped an arbitrary Dominion over his Fellow-Subjects, whom he held in the moſt abject Slavery.

The Chief Juſtice *Glynn*, and his Brother, it ſeems, held, That this Uſurper and Tyrant was as lawful a Prince as ever reigned; and that all the Statutes made againſt Treaſon were equally in Force againſt thoſe, who conſpired his Death, as if they had conſpired the Death of a Prince, againſt whoſe Title there was no manner of Exception; which was in Effect to adjudge there was no Diſtinction between Right and Wrong, between a Legal Government, and a Power that had nothing but Force to ſupport it: That a Pyrate, or a Highwayman, had as much Right to the Submiſſion and Obedience of thoſe he had got in his Power, as any Sovereign had to the Submiſſion and Allegiance of his Subjects; which is a Doctrine that might be expected from ſuch Judges, who were content to take their Commiſſions from the Uſurper, and who daily put Men to death, and deprived them of their Liberties and Eſtates, by no better Authority. But I ſhall ſpend no Time in refuting an Opinion that all the World condemns at this Day. I proceed to another Queſtion that was made upon the Occaſion, *viz.* Whether it was lawful for any Subject, over whom *Cromwell* had (without any Colour or Pretence of Law) uſurped a Dominion, to endeavour to deliver himſelf, his Prince, and his Fellow-Subjects, from this Man's Tyranny and Oppreſſion, by taking away the Uſurper's Life: It ſeems, it was the Opinion of many in thoſe Times, that it was lawful, and an Heroick Act, to take

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take off the Uſurper, by any Means whatever, when he was grown too great to be called to an Account by the ordinary Methods of Juſtice; and accordingly a Book was publiſhed, ſaid to be written by Colonel *Titus*, (though here they make *Sexby* the Author of it) to prove *Killing* (in this Caſe) *No Murder:* And this, it ſeems, was the Opinion of the Old *Romans*, and the Maxim *Brutus* went upon, when he murdered *Cæſar* in the Senate, who had leſs to juſtifie him than *Sindercome* had, inaſmuch as *Cæſar* did not add Oppreſſion to his Uſurpation, as *Cromwell* did to a very great Degree.

But whether ſuch Aſſaſſinations are juſtifiable or not, ſure I am, King *Charles* II never gave any Countenance to them; either becauſe he did not approve of them, or becauſe he was ſatisfied the Uſurper would encourage the like Attempts upon him, and would be much more likely to ſucceed in them; the King having no Guards to ſecure his Perſon, as the Uſurper had. It may be obſerved farther, that *Sindercome* acted upon a different Principle than either the ancient *Romans*, or the modern *Royaliſts*, went upon; for he was a true *Leveller*, one who had been taught by the Uſurper, or his Creatures that there ought to be no Diſtinction or Superiority amongſt Men: And, by Virtue of this Principle, had aſſiſted *Cromwell*, firſt in murdering his Prince, and then in ſubduing the Rump: And the poor deluded Enthuſiaſt expected, when this was accompliſhed, that *Cromwell* ſhould have relinquiſhed the Power, he had poſſeſſed himſelf of by their Means, and have left every Man to do what was Right in his own Eyes. And when *Sindercome*, and his *Fellow-Levellers*, found he aſſumed a more arbitrary and tyrannical Government than any they had demoliſhed, they were reſolved to cut him off: And it coſt him more Trouble and Diſquiet to ſubdue thoſe, into whom he had inſtilled the Levelling Principles, in order to deſtroy all the Powers above him, than it did to defend himſelf againſt the *Loyaliſts*, and all the Reſt of his Enemies. It is evident he never enjoyed any tolerable Security, after he diſcovered there was nothing in all that Hypocritical Zeal he had pretended for Religion and Liberty, and that Ambition was the Spring of all his Actions: When the *Levellers* ſaw this, they bent their whole Force againſt him; and he ſo much dreaded them, that he wore Armour under his Cloaths, and ſcarce ever lay twice in the ſame Chamber. Fear and Perplexity might be diſcovered in his Countenance, and he could not take his natural Reſt; he was ever diſtracted with frightful Dreams, and became the moſt uneaſy Mortal in the three Kingdoms he had ruined: This was the happy State he had waded through Seas of Blood to arrive at. But to return to *Sindercome*, and enquire a little into the Cauſe of his Death.

The Coroner's Jury (as well as the People) it appears, were in great Doubt what was the Occaſion of his Death; they adjourned twice, and could come to no Agreement, until they were carried to the Chief Juſtice's Chamber, and received his Directions. To ſuggeſt, as the Uſurpers Friends do, that they were carried thither only to learn how to put their Preſentment into Form, was ridiculous; this was the Coroner's Buſineſs, and not theirs; and he could not have wanted Inſtructions, if he had been ignorant of the Form himſelf: It is evident, therefore, the Jury were carried to the Chief Juſtice's Chamber to be threatned, or otherwiſe influenced in their Verdict; and here they are made to ſay, *That he killed himſelf, by ſnuffing Poiſon up his Noſe:* Though it did not appear to them, that he ever had any Snuff, or that there was any lodged in the Noſtrils, or the Paſſages to the Brain, which ſurely there muſt have been, if the Brain had been affected by it: Beſides, *Sindercome* muſt be exceeding well skilled in Poiſons, to find one that ſhould operate ſo kindly, and ſo ſeaſonably; that only threw him into a pleaſant Slumber, according to the Depoſitions of his Guards, and killed him within the Space of two Hours, without a Struggle or a Groan, or at leaſt any ſuch Agonies or Convulſions, that might have been expected from a Poiſon, that had its effect ſo ſuddenly; and as there were no Symptoms of Poiſon appeared, either in the Manner of his Death, or on the opening his Head or Body, it ſeems much more probable that he was ſmothered with the Bed-cloaths, than poiſoned. If it be demanded, why the Uſurper ſhould murder the poor Wretch privately? The Lord *Clarendon*, has furniſhed us with two very good Reaſons for it, (*viz.*) Leſt he ſhould be reſcued by his Brethren, the *Levellers* in the Army; or, he ſhould declare ſome unſeaſonable Truths, having been very intimate with the Uſurper.

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His Mother's Depoſition is ſo drawn up, I muſt confeſs, that on the firſt Reading, one would be inclined to think ſhe was with him when he died; but upon reading it more carefully, I find ſhe only ſays, ſhe *heard* he was very ſick, and ſhe *heard* he died ſuddenly: Beſides the Coroner's Inqueſt find he died at Twelve a Clock at Night, and ſhe did not *hear* of his Illneſs, it appears, till then, if ſhe did till the next Day; for this Senſe the Words will very well bear, namely, That ſhe heard the next Day, that ſhe was ſent for at Twelve the preceding Night.

And laſtly, there can be very little Streſs laid on theſe Words of the Priſoner, that *That was the laſt Bed he ſhould go into*, if he did ſpeak them; for he might very well ſay this, though he had no Deſign of poiſoning himſelf, becauſe he knew he was to be executed the next Morning, and had Time allowed him by his Guard to ſay his Prayers, and prepare for his Execution: Their producing ſuch Circumſtances, therefore, to prove he murdered himſelf, ſeems to intimate they wanted better Evidence of it.

The

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Slingsby's Trial.

The Trial of Sir HENRY SLINGSBY, Knt. for High-Treaſon, before a pretended High-Court of Juſtice in *Weſtminſter-Hall*, the 25th of *May* 1658. 10 *Car.* II.

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The Charge.

THE Impeachment charges Sir *Henry* with High-Treaſon againſt the Lord Protector *(Cromwell)* and the Common-Wealth, in conſpiring to betray the Town and Garriſon of *Hull* to *Charles Stuart*, eldeſt Son of the late King *Charles*; and with endeavouring to withdraw *Ralph Waterhouſe*, *John Overton*, and other Officers of the ſaid Garriſon, from their Obedience to his Highneſs the ſaid Lord Protector: With endeavouring to raiſe an Inſurrection in Favour of the ſaid *Charles Stuart*, the Son, correſponding with him, and contriving to advance him to the Throne; and with delivering a Commiſſion from *Charles Stuart* to the ſaid *Waterhouſe*, to be Governor of the Caſtle of *Hull*,

He deſires a Trial by Jury.

Sir *Henry* being arraigned, deſired he might be tried by a Jury, according to Law; but was told, the Court conſiſted of a Number of Perſons amounting to two or three Juries: That Acts of Parliament made Law and Juſtice, and theſe had altered the Manner of Trial, and conſtituted this Court both Jury and Judges; and that he was a Parliament-Man when the Act was made, and ſo conſented to it.

Sir *Henry* replied, he was a Priſoner when the Act was made and could not be ſaid to treſpaſs againſt their Laws, becauſe he never ſubmitted to them: That Laws were intended for the Preſervation of Liberty and Property; but every Thing was taken from him, he had received no Benefit by their Laws: However, Sir *Henry* being at length prevailed on to plead *Not Guilty*, the Attorney-General called his Witneſſes.

The Evidence.

Ralph Waterhouſe depoſed, That Sir *Henry* tampered with him, and offered him 5000 *l.* to ſecure the *South-houſe* for the King's Service, and ſaid that the Duke of *York* would bring over 7 or 8000 Men from *Flanders* to beſiege *Hull*, and if the *South-houſe* were ſecured, the Work would be half done: That Sir *Henry* alſo offered the Deponent a Commiſſion to be Governor of the Caſtle, and two Block-houſes near *Hull*, which was dated at *Bruges*, *March* 12, 1657, and that the Deponent had then the Command of a Company, and of the *South-Block-houſe*.

Overton depoſed, he ſaw Sir *Henry* deliver the ſaid Commiſſion to *Waterhouſe* in *April*, then laſt paſt: And that he alſo being an Officer of the Garriſon of *Hull*, and Sir *Henry* his Priſoner, he had in like Manner tampered with the Deponent to betray the Town to the King, and told him, the King would land either at *Hull* or *Scarborough*; and that the Priſoner ſaid, his Son aſſured him the Town was too ſtrong for the Garriſon.

George Thompſon, Lieutenant to *Waterhouſe*, alſo depoſed, That Sir *Henry* had tampered with him, and told him there was a Deſign to bring in the King with a conſiderable Army; and that the King had promiſed Pardon to all Officers, but the Lord Protector and *Bradſhaw*.

His Defence

Sir *Henry* in his Defence ſaid, he perceived he had been trepaned by theſe Fellows, and that they had ſworn that ſeriouſly, which he had ſpoken in Mirth, while he was their Priſoner in *Hull*; but that indeed they had moved the matter to him, and not he to them: and that the Commiſſion they mentioned was a Blank he had by him theſe four Years.

See the Sentence in Mr. Mordant's *Trial.*

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Hewet's Trial.

The Trial of JOHN HEWET, D. D. for High-Treaſon, before a pretended High-Court of Juſtice in *Weſtminſter-Hall*, the firſt of *June*, 1658. 10 *Car.* II.

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The Charge.

THE Attorney-General exhibited an Impeachment againſt the Doctor, wherein he is charged with High-Treaſon, in conſpiring, with other Traitors, to levy War againſt the Protector and Common-wealth, in order to ſubvert their Government, and advance *Cahrles Stuart*, to the Throne: He is alſo charged with delivering Commiſſions from the ſaid *Charles Stuart*, *John Stapely*, and *Henry Mallory*, to levy War, *&c.*

He queſtions the Authority of the Court.

The Doctor, being arraigned as uſual, deſired he might have Counſel; and this being denied, he demanded by what Authority the Court ſat, and that their Commiſſion might be read; but the Preſident anſwered, they ſat there by a Commiſſion under the Great Seal, in Purſuance of an Act of Parliament; and that it was not uſual to read Commiſſions to Priſoners.

The Doctor replied. He was not to own every Perſon who would take upon himſelf to judge him, and therefore again deſired to know by what Commiſſion they ſat; and if all the Commiſſioners were there, as he apprehended they ought to be, by the Earl of *Leiceſter*'s Caſe in *Plowden*.

The Attorney-General ſaid, the Commiſſion authorized all the 50 named in it to be his Judges, *or any Seventeen of them*; but indeed where no *Quorum* was appointed, as in the Caſe in *Plowden*, they muſt be all preſent.

Refuſes to plead.

The Clerk demanding of the Doctor again, If he was *Guilty*, or *Not Guilty?* the Doctor anſwered, he ſhould be loth to ſave his Life, by forfeiting a good Conſcience: That he was looked upon in a double Capaci-

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ty, as a Clergyman, and Common-wealthsman, and he would not give Scandal to either; therefore, if they would do Juſtice to themſelves, and vindicate the Legality of their Judicature, he would proceed: Otherwiſe he would rather die ten thouſand Times, than be guilty of giving up his Fellow-Freemens Liberties and Privileges: And the Doctor, refuſing peremptorily to plead, was ordered to be taken away, and *John Mordant*, Eſq; to be brought to the Bar. 1658. 10 Car. II.

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The Trial of the Hon. JOHN MORDANT, Eſq; for High-Treaſon, before a pretended High-Court of Juſtice, the firſt of *June*, 1658. 10 *Car.* II. 1658 10 Car. II.

Mordant's *Trial.*

The Charge. THE Priſoner was impeached of High-Treaſon, againſt the Lord Protector and Common-wealth, for inciting and endeavouring to raiſe a new War, in order to ſubvert their Government, and advance *Charles Stuart* to the Throne; and for that he conſulted with *John Stapely* and *Henry Mallory* how to effect the ſame, and delivered Commiſſions to ſeveral other Perſons to levy War againſt the Government.

Mr. *Mordant*, being arraigned, made the ſame objections to the Court, and the Legality of this Method of Trial, that Dr. *Hewet* had done; but at length, by the Advice of his Friends, and an Intimation that Mercy was intended towards him, he pleaded *Not Guilty*.

The Evidence. Then the Protector's Counſel produced their Evidence, and firſt Mr. *John Stapely* was ſworn, who depoſed, That the Priſoner told him there was a Deſign to bring in the King, who had wrote to him to ſpeak to his Friends to be ready; and that the King would bring 7000 Men with him; and Sir *Francis Vincent* and Sir *William Waller* were in the Conſpiracy.

Mr. *Anthony Stapely* depoſed, That being at the *Half-Moon-Tavern*, in *Alderſgate-ſtreet*, with Captain *Mallory* and Mr. *Mordant*, the latter enquired into the Affairs of *Suſſex*, and what Preparations there were, in caſe the King of *Scots* ſhould land; and the Deponent anſwering, There would be an Appearance anſwerable to his Expectations; but there was a conſiderable Strength ready to aſſiſt them in *Surrey*; Mr. *Mordant* replied, He had delivered out four Commiſſions, three of Horſe, and one of Foot, to the beſt of his Remembrance, but he durſt not ſwear it; and it was agreed to meet at *Crawley*, in *Surrey*, the *Tueſday* following, to concert Matters between *Surrey* and *Suſſex*.

His Defence. Then the Depoſition of Captain *Mallory*, who had eſcaped out of Priſon, was read; giving an Account of the Conſpirators meeting at the *Half-Moon*, and appointing to meet again in *Surrey*, to ſee how Affairs ſtood in relation to the Counties of *Surrey* and *Suſſex*.

Mr. *Mordant* obſerved in his Defence, That the firſt Witneſs did not ſwear he ſaw any Letter from *Charles Stuart*, and however he was but one Witneſs; that the next was very uncertain in his Evidence, and could not tell, whether the Commiſſions were for Horſe or Foot; that there was no Meeting at the Place mentioned in *Surrey*, nor was it ſaid what they were to meet about. Then the Court adjourned; and on the 2d of *June*, Sir *Henry Slingsby*, Doctor *Hewet*, and Mr. *Mordant*, were again brought to the Bar, and Mr. Attorney prayed the Judgment of the Court as to Sir *Henry Slingsby* and Mr. *Mordant*; and as to Doctor *Hewet*, who refuſed to plead, he demanded their Juſtice. *The Priſoners called to Judgment.*

The Preſident thereupon demanding of Sir *Henry Slingsby*, what he could ſay, Why the Court ſhould not proceed to Judgment? He anſwered, he deſired to be tried by a Jury, looking on the Court as his Enemies, ſome of them having already ſequeſtred and ſold his Eſtate, becauſe he would not compound; and if he had compounded, the Times were ſo unſettled, that he did not know but he might be compelled to compound over again; and thought it ſtrange, that his Enemies ſhould be both his Judges and Jury: But the Court would hear no more of this; and the Preſident proceeded to make a Speech to the Priſoners, wherein he tells them, That it was a great Aggravation of the Sins of the *Egyptians*, that when God had declared himſelf by ſo many Signs and Wonders on Behalf of the *Iſraelites*, they ſhould ſtill purſue *Moſes*: And who could be ſo much a Stranger to theſe Nations, as to be ignorant what God had done among them, by a Series of wonderful Providences ſo many Years together, againſt a Party, who were ſtill hatching of Treaſons and Rebellions againſt them? That it grieved his Soul to think, after ſo many ſignal Providences, wherein God ſeemed to declare himſelf as it were by Signs and Wonders, that their Hearts ſhould be more hardned than the *Egyptians*; for they did at length ſee that the Lord fought againſt them: But the *Cavaliers*, though they could not but ſee that the Lord fought againſt them, that the Stars in their Courſes fought againſt them, yet they would not ſee or confeſs it, till their Deſtruction overtook them; and if theſe wonderful Providences would not move them, he thought National Conſiderations might deter them from theſe Practices: For *Charles Stuart* was in Confederacy with *Spain*, that great Popiſh Intereſt againſt *England*: And it was very ſtrange that a Proteſtant could aſſiſt ſuch an Intereſt as this; yet ſuch Proteſtants were the Priſoners. And as to Sir *Henry Slingsby*'s obſerving that he was a Priſoner, and therefore not ſubject to their Laws; he ſaid every Man owed a Natural Allegiance to the ſupreme Magiſtrate, and that his not owning the Government was in itſelf a great Offence, and far from being an Excuſe for Treaſon: *The Preſident's Speech to the Priſoners.*

And

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And what did they think would have become of the Proteſtant Intereſt, if they had ſucceeded, and *Charles Stuart* had been brought in? Did they but review the Declarations of Parliament, ſince 1640, they would ſee what Family it was betrayed the Proteſtants of *France*, when *Rochel* was taken? What Family it was that betrayed the Proteſtants in *Germany*, and in the *Palatinate*, when a Peace was made with *Spain*? What could they think of that Family that could tolerate Popery for a Match with *Spain*? What would that Family have done if they had regained the three Kingdoms once again?

As to Mr. *Mordant*, he ſaid, God appeared to him at this Time, as he did to Sinners in Jeſus Chriſt; for he did clear Sinners in Jeſus Chriſt, *even when they were Guilty*, and ſo God cleared him. He would not ſay he was Guilty, but bid him ask his own Conſcience, whether he was ſo or not? and bleſs God as long as he lived, and bleſs the Lord Protector, by whoſe Authority he was cleared.

Mordant acquitted.

Then the Clerk was ordered to read the Sentence againſt the other two Priſoners, *(viz.)* That they ſhould be Drawn, Hanged, Beheaded and Quartered; but the Protector was pleas'd to be contented with the ſevering their Heads from their Bodies: And they were beheaded on *Tower-Hill*, the 8th of *June*.

Sentence paſſed on Slingsby *and* Hewet.

They are Executed.

I do not perceive, there was any formed Plot for bringing in the King at this Time; but his Majeſty had been endeavouring to prevail with the *Spaniards*, to ſpare him a Body of Troops; and the *Cavaliers*, in hopes that a Negotiation would have ſucceeded, were numbering their Friends, and computing what Forces they might depend on, if the King ſhould Land. And it is amazing that, after ſo long and ſo cruel a Tyranny, the Spirits of the *Cavaliers* were not yet broken; that after ſo many Repulſes and Defeats, they ſhould retain their Courage, and dare to oppoſe the Uſurper, who was ſupported by an Army of *Veteran* Troops: They were not yet convinced it ſeems, that Succeſs was an Argument of a good Cauſe; nor would the Preſident of this Mock-Court, if he had foreſeen, that, within the ſpace of Two Years, all his Arguments, drawn from the Succeſs of the Tyrant's Arms, would have retorted with ſo much Advantage upon the Rebels, ſo ſhamefully have inſulted theſe brave Men, who refuſed to acknowledge the Tyrant's Juriſdiction.

Remarks on the Trial of Sir Henry Slingsby, *&c.*

We ſee the Preſident alſo urging the danger of Popery againſt a Reſtoration; not reflecting, that his Maſters had deſtroyed all Appearance of Religion; unleſs Hypocriſy and Cant, Oppreſſion and Injuſtice, might paſs for ſuch: And as to the State, they could not be ignorant that the Conſtitution was entirely ſubverted, and all their Liberties and Priviledges ſwallowed up, by the ſucceſsful Uſurpation they ſo much adored.

What worſe could have happened by the Reſtoration of the King, with what he endeavoured to terrify the People? And when this Event, which he ſeemed ſo much to dread, happened, how were the Days of King *Charles* II. when the Laws flowed in their proper Channel, and every Man remained ſecure in the Enjoyment of his Property, preferable to that Iron Age, when every Thing, and every Perſon, was forced to ſubmit to the arbitrary Dictates of the Uſurpers!

With what a different Face did the Nation appear after the Reſtoration! Arts and Sciences, univerſal Benevolence, good Humour, and Freedom of Converſation, were ſome of the bleſſed Fruits of the King's Return; while nothing but Murders, Robberies, Sequeſtrations, and Decimations, were exerciſed on the beſt and greateſt Part of the Nation, during the Reign of thoſe pretended Saints; and the Spies and falſe Friends thoſe Uſurpers employed, to inſinuate themſelves into every Company, made the moſt intimate Friends afraid to communicate their Thoughts to each other: Gloomy, melancholy Looks, Treachery and Cruelty, were the diſtinguiſhing Marks of thoſe Times; their Tyranny extended even to Thoughts, Words, and Geſtures; and a chearful Countenance was looked upon as a Sign of Diſaffection and Reprobation.

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The Trials of Twenty-Nine of the REGICIDES, for High-Treaſon, by a Commiſſion of *Oyer* and *Terminer*, at the *Old-Bailey*, *London*, 10 *October*, 1660. 12 *Car.* II.

The Trials of the Regicides.

The Charge.

THE Indictment charged them with Compaſſing and Imagining the Death of the late King *Charles* I. And the ſitting in Judgment on his Majeſty, and ſigning a Warrant for the Execution, were laid as Overt-Acts of that Treaſonable Imagination.

Harriſon *tried.*

Colonel *Thomas Harriſon*, was the firſt of the Regicides that was brought upon his Trial; who being Arraigned and directed to plead *Guilty* or *Not Guilty*, ſaid they were vain Words, and deſired he might anſwer the Charge his own way; however, he was prevailed on at length to plead *Not Guilty*.

The Evidence againſt him.

Then the King's Counſel opened the Indictment, and produced five Witneſſes, who depoſed, that *Thomas Harriſon*, the Priſoner, ſat as one of the King's Judges, in the pretended high Court of Juſtice; and particularly on the 27th of *January*, 1648. when the Sentence was read; and that he ſtood up with the reſt, to expreſs his Aſſent to it: And one of the Witneſſes made Oath, that the Members of that pretended Court, ſitting in the Exchequer Chamber, and debating concerning the Impeachment of the King, *Harriſon* ſaid, *Gentlemen, it will be good for us to Blacken him*; and that he heard *Harriſon*

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ſon tell the other Regicides, that when he was bringing the King to *London*, the King asked him when they were in the Coach together, what they intended to do with him; whether to murder him or not: And the Priſoner anſwered, there was no intention to Murder him; they had no ſuch Thoughts; but *the Lord hath reſerved you for a publick Example of Juſtice.* The Priſoner's Hand alſo was proved to the Warrant for ſummoning the High Court of Juſtice, and to the Warrant for Beheading his late Majeſty.

The Lord *Newburgh* depoſed further, That *Harriſon* commanded the Party that brought the King from *Hurſt-Caſtle* to *London*; and that his Majeſty dining on the Road, at *Bagſhot-Lodge*, where the Deponent then reſided, *Harriſon* gave Orders for placing the Centinels: and when they ſet forward for *Windſor*, *Harriſon* ordered ſeveral of his Officers to ride cloſe to his Majeſty, leſt he ſhould make his Eſcape.

Harriſon's *Defence.*

The Priſoner ſaid in his Defence, that the Matter he was charged with, was not done in a Corner; the Sound of it had reached moſt Nations: And he believed the Hearts of ſome had felt the Terrors of that Preſence of God that was with his Servants in thoſe Days; however it had ſeemed good to God to ſuffer this Turn to come upon them: That he had earneſtly deſired of God, the Searcher of Hearts, if he had done amiſs, that he might receive ſome Convictions on his Conſcience; but though he had ſought it with Tears many a Time of that God, in reſpect of whom they and all Nations were but as a Drop of the Bucket, to that Moment he had rather received Aſſurance of the Juſtice of what he had done: And he believed, e'er long, it would be made known from Heaven, there was more of God in it, than Men were aware of: That their Lordſhips knew what a Conteſt there had been for many Years, and how active many upon the Bench had been. *And being reprimanded by the Court for his Reflections, he went on, and ſaid,* That what he had done was out of Conſcience to the Lord; and he conceived, that what had been done by Authority of Parliament, no other Juriſdiction could meddle with: That they were the ſupreme Authority, and thoſe who acted under them could not to be queſtioned by any Power leſs than that. And whereas it had been ſaid they uſurped that Power, he ſaid it was rather done *In the Fear of the Lord. (Here he was interrupted again, and told, that ſuch Things were not fit to be vented in an Aſſembly of Chriſtians, to make God the Author of all their damnable Treaſons)* He proceeded, however, and ſaid, That what he had done by Authority of Parliament, he ought not to be queſtioned for: Otherwiſe they were in a miſerable Condition, *Bound to obey thoſe that were in Authority, and yet to be puniſhed when they obeyed*; and deſired Counſel to that Point. The Court anſwered, If there was any Difficulty, they ſhould, and ought to be Counſel for him; but that neither one or both the Houſes of Parliament, neither the People, collectively or repreſentatively, had any Coercive Power over their King; much leſs thoſe few Members of the Commons, after they had purged their Houſe of the Corrupt Majority, as they called it: And Mr. *Anneſly* put the Priſoner in mind, That he was the Man that forcibly removed the Parliament's Guard, and placed other Guards at the Door of the Houſe, who threatned and inſulted the Members: That after the Houſe had reſolved, *That the Treaty in the* Iſle of Wight *was a Ground for Peace*, Forces were drawn down to the Houſe of Commons, and none ſuffered to come in, but thoſe the Soldiers approved of: And all, who profeſſed any Duty to the King, were ſeized on by *Harriſon*, and his Fellows, and then the Priſoner, and a ſmall Remnant of the Houſe, declared againſt the Vote that had paſſed for a Treaty with his Majeſty, and took upon them to exerciſe Sovereign Authority; and under theſe he would skreen himſelf, as acting by Authority of Parliament, when a Majority of the Houſe of Commons diſavowed their Proceedings: And had they been Entire, they could have had no Pretence to the Supreme Authority.

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The Court reply to his Defence.

Then the Lord Chief Baron proceeded to direct the Jury, and informed them, That if any of the Overt-acts, laid in the Indictment, was proved; either his Conſulting, Adviſing, Sitting in Judgment, or Sentencing the King, they ought to find the Priſoner Guilty; but here all theſe Facts were proved, not only by Witneſſes, but by the Priſoner's Confeſſion: He obſerved alſo, that the Priſoner had the King in his Cuſtody, and brought him Priſoner from *Hurſt-Caſtle, without any Authority from thoſe he called the Supreme Power:* And that if any Man went about to impriſon the King, it had been often adjudged an Evidence of imagining and compaſſing the King's Death: That the Priſoner was ſo far from denying the Facts, that he juſtified what had been laid to his Charge. Whereupon the Jury found him guilty, without going out of Court; and Sentence was pronounced on him as a Traitor.

The Chief Baron's Charge to the Jury.

He is convicted and condemned.

Then *Adrian Scroop* was brought to the Bar, againſt whom ſix or ſeven Witneſſes depoſed, That they had ſeen him ſit as one of the late King's Judges, in the pretended High Court of Juſtice; and particularly, on the 27th of *January*, when the Sentence was read, and they all ſtood up to expreſs their Aſſent to it: His Hand was alſo proved to the Warrant for ſummoning the Court, and to the Warrant for beheading the King.

Scroop tried.

The Evidence.

Mr. *Scroop* ſaid in his Defence, That the High Court of Juſtice was erected by the Parliament, which was then the Supreme Authority of the Nation, and generally ſubmitted to; and what he had done, was in Obedience to that Authority.

His Defence.

The Lord Chief Baron replied, That what he had offered in his Defence, tended rather to aggravate, than extenuate his Crime; that he (as well as others) was miſtaken in the Word *Parliament:* There was not one Precedent of any other Houſe of Commons aſ-

The Court reply to him.

ſuming

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But 26 of the Commons that voted for trying the King.

ſuming Legiſlative Power, or making an Act to erect a Court of Juſtice, for the Trial of their King: And beſides, there were but Forty-ſix, even of the Commons, that ſat in the Houſe; Two Hundred and Forty were excluded; ſo that they had no Pretence to be called an Houſe: That the Lords alſo were then in being, and rejected that pretended Act, under which they would ſhelter themſelves; and of the Forty-ſix Commoners that remained in the Lower-Houſe, there were not more than Five or Six and Twenty that were for erecting that Court; and theſe Men had taken the Oaths of Allegiance and Supremacy, and ſworn to defend the King, his Crown and Rights, againſt all Perſons whatſoever: That they had acknowledged, in the Oath of Supremacy, that the King was the ſupreme Governor of theſe Nations; and ſworn that they would maintain all the Priviledges, Immunities and Preheminences, annexed to the Imperial Crown of this Realm; and thoſe who pretended that Men, by breaking through all the Ties and Obligations of Allegiance, could gain any lawful Authority, muſt ſpeak againſt the Light of their Conſciences, and all Laws, Divine and Human. Mr. *Scroop* ſaid, If he had been miſled, he was not the only Perſon. He ſaw a great many Faces that were miſled as well as himſelf; and he hoped an Error in Judgment would not be accounted Malice: He never went to Work with a malicious Intent, or bore Malice to his late Majeſty: But the Lord Chief Baron told him, that though this might be ſome Excuſe for him before God, in Law the Fact itſelf implied Malice; and the Jury, without going out of Court, found him guilty.

Scroop reflects on the Court.

He is convicted.

Carew tried.

The Evidence.

Then Mr. *John Carew* was brought to the Bar, and the King's Counſel having opened the Indictment, the Witneſſes depoſed, That the Priſoner ſat as one of the late King's Judges, in the pretended High-Court of Juſtice: That his Hand was to the Warrant for ſummoning the ſaid Court, and to the Warrant for beheading his late Majeſty; and that the Priſoner was a Member of the Long Parliament.

His Defence.

Mr. *Carew*, in his Defence, ſeemed much offended, that it was ſaid in the Indictment, he had not the Fear of God before his Eyes, but was moved by the Devil to murder the King; and averred, that what he had done, was *in the Fear of the Lord, and in Obedience to his Holy and Righteous Laws:* He confeſſed that he did Conſent to be one of the late King's Judges; firſt, in Obedience to the Lord; and, ſecondly, in Obedience to that which was then the Supreme Authority of the Nation: That the Matter in Queſtion had been controverted in the Face of the whole World; and the Lord had given an Anſwer upon ſolemn Appeals; *(And was entering upon the Grounds and Reaſons of the War)* But the Court let him know, That they muſt not hear him make Diſcourſes in Juſtification of a horrid and notorious Treaſon; and as to his having acted *in the Fear of the Lord*, they bid him remember, that the Devil appeared ſometimes as an Angel of Light: And that he ſhould not be ſuffered to caſt in Bones of Contention, to revive thoſe Differences which were but juſt laid aſleep. That this Treaſon had no Relation to what was done by the Lords and Commons, at the Beginning of the War; for the Act, under which he pretended to skreen himſelf, was not made by the Authority of either Houſe: There were but Forty-ſix of the Commons in the Houſe, when it was debated; and not more than Twenty-ſix that voted it; which could never be underſtood by any one to be an Act of Parliament: It was no more than an Order of a ſmall Remnant of the Commons, after they had excluded a vaſt Majority.

The Court reply to his Defence.

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The Priſoner replied, Since they would not ſuffer him to open the Nature of theſe Things, and the Grounds he went on, which ſatisfied his own Conſcience, that what he did was from the Lord, he left his Cauſe to the Jury; telling them, that the Authority he ſpoke of was a Rightful Authority; it was the Supreme Power: It was well known what they were: Concluding, he had deſired to ſpeak the Words of Truth, and Soberneſs; but was prevented. Then the Court having obſerved to the Jury, that the Treaſon was fully proved, both by Witneſſes, and his own Confeſſion, they found him Guilty, without going from the Bar: After which the Court adjourned.

He continues to juſtify the Fact.

He is convicted.

Scot *tried.*

The Court ſitting again the 12th of *October*, *Thomas Scot* was brought to the Bar, againſt whom the Indictment being opened, and the Jury ſworn, ſeveral Witneſſes depoſed, That the Priſoner ſat as one of the late King's Judges, in the pretended high Court of Juſtice, and particularly, on the 27th of *January*, when all the Members ſtood up, to expreſs their Aſſent to the Sentence: Another Witneſs depoſed, That his Hand was to the Warrant for beheading the late King. Sir *Theophilus Biddolph* depoſed, that he heard Mr. *Scot* ſay, in *Richard*'s Parliament, That he ſat as one of the King's Judges; and he was ſo far from repenting of it, that he deſired this Inſcription might be upon his Tomb, *(Viz.) Here lies* Thomas Scot, *who adjudged to Death the late King.* Colonel *Copley* teſtified the ſame Thing; and that the Priſoner added, *He hoped he never ſhould repent of the King's Death.*

The Evidence.

The Lord Mayor Elect depoſed, That on the laſt Day of the ſitting of the Parliament, a little before his Majeſty's Return to *England*, Mr. *Scot*, ſeeing the Houſe muſt break, ſaid, *Their Heads muſt be laid to the Block, if there was a new Parliament: I confeſs* (ſaid he) *I had a Hand in putting the King to Death, and I deſire all the World may take notice of it; and when I die, that it may be written on my Tomb. I do not repent of any Thing I have done; if it were to do, I could do it again.* *William Lenthall*, Eſq; alſo depoſed, That, the Houſe being about to diſſolve itſelf, Mr. *Scot* made a Speech, juſtifying the putting the King to Death; but he did not remember the particular Expreſſions mentioned by the other Witneſſes. Then the Lord Mayor further depoſed, that this was

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the Concluſion of Mr. *Scot*'s Speech in the Houſe, *Being it is your Pleaſure to have it ſo* (the Houſe diſſolved,) *I know not how to hinder it; but when that is done, I know not where to hide this hated Head of mine.* Mr. *Baker* alſo depoſed, that diſcourſing with Mr. *Scot*, in the Time of *Richard*'s Parliament, he ſaid, *He had cut off one Tyrant's Head, and he hoped to cut off another.*

Scot's Defence.

The Priſoner ſaid in his Defence, that it was a Breach of Priviledge to proſecute him in an inferiour Court, for what he had ſaid, or done, in Parliament; but the Court informed him, that for Treaſon, or Felony, committed in the Parliament-Houſe, there was no Priviledge that could prevent his being tried for them in the Courts of Common-Law; but that there did not want other Evidence of his compaſſing and imagining the King's Death.

Then Mr. *Scot* proceeded in his Defence, and averred, That he never ſaid, *He hoped he ſhould never repent of the King's Death:* But on the contrary, he had often, by Prayers and Tears, beſought the Lord, that if there were any Iniquity in it, he would ſhew it him: That it was by the Command and Authority of a Parliamentary Power he ſat as one of the King's Judges; and this muſt juſtify him, whatever the Nature of the Fact was: That this Court could not take Cognizance whether they were a legal Parliament, or not; and he did not know, but it might be as fit for that Parliament to make Laws, as the laſt, being called by the *Keepers of the Liberties of* England: That if they were not properly a Parliament, they were the Legiſlative Power, and their Acts binding: That if two Eſtates might exclude a Third, as they had done the Biſhops; if the ſecond did not continue to exerciſe their Truſt; they that were in, by Occupancy might have a Title to the whole; and continued to inſiſt he had a Parliamentary Authority, a Legiſlative Power, to juſtify him.

The Court reply to his Defence.

The Court replied, That theſe Things had been urged already, and that no ſingle Perſon or Community, neither the People collectively, or repreſentatively, had any Coercive Power over the King. That the Aſſembly, who made that pretended Act, were not an Eighth Part of the Commons Houſe: That the Houſe of Lords was then ſitting, and rejected it; and therefore there was nothing like Parliamentary Authority to juſtify him. That Forty Highwaymen, met together at *Shooter's-Hill*, might as well pretend to Parliamentary Authority, as that little Convention at *Weſtminſter:* That the vulgar Acceptation of the Word *Parliament*, had led many into Miſtakes; but that nothing could properly be ſaid to be done by Parliamentary Authority, but what was done by King, Lords, and Commons: And as to what the Priſoner mentioned, concerning the ejecting the Biſhops, this was not at all to the Purpoſe; for that Act was made by the Conſent of King, Lords, and Commons: And,

Mr. *Anneſley* put the Priſoner in mind, that when the People appeared jealous that they intended to alter the Government, the Parliament called it A *Black Scandal, caſt upon them:* And that the two Houſes cauſed a Declaration to be affixed on all the Churches in *England:* That they held the Government of King, Lords and Commons, to be the Fundamental Government of this Kingdom. Then the Priſoner claimed the Benefit of his Majeſty's Pardon; but the Court replied, It was very odd to talk of a Pardon, after ſuch a Juſtification: That the King's Proclamation could not be pleaded in Bar to the Proceedings of the Court: They could take no Notice of a Pardon that was not under the Broad Seal; though they did not doubt his Majeſty would Inviolably make it good, if he appeared to be within it. Then the Lord Chief Baron directed the Jury, and took particular Notice of the aggravating Speeches of the Priſoner, his Juſtifying the King's Murder, and *wiſhing the Action might be Engraven on his Tomb:* And the Jury thereupon found him *Guilty*.

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Then *Gregory Clement* was brought into Court, and pleaded *Guilty*.

Clement pleads Guilty.

John Jones alſo, being ſet to the Bar, offered to make a partial Confeſſion, which the Court not accepting, the Jury was ſworn, and the Witneſſes produced, who depoſed they ſaw the Priſoner ſit as one of the late King's Judges, in the pretended High-Court of Juſtice. His Hand alſo was proved to the Warrant for ſummoning the Court, and to the Warrant for beheading the King: And the Jury found him *Guilty*.

Jones Convicted.

The Chief Baron's Speech to the Priſoners.

Then all the Priſoners, that had been tried after *Harriſon*, were ſet to the Bar; and it was demanded, what they had to ſay, why Judgment ſhould not paſs upon them: To which they generally anſwered, they threw themſelves on the King's Mercy: And the Lord Chief Baron made a Speech to them on the Occaſion, in which he ſet the horrid Crime the Priſoners were convicted of, in a proper Light: He told them the King they had murdered, was a Perſon of eminent Parts and Virtues, that would have rendered him admir'd even in a private Station: That his Clemency appeared in the beginning of his Reign; and, if they looked back, they would find the People enjoyed greater Peace and Proſperity in his Days, than in the Reigns of former Princes: That but one Nobleman had been put to Death in his Time, and that for an Offence not to be named. That they might remember the King had, before the Wars, redreſſed every Grievance they could complain of; the Star-Chamber, High-Commiſſion, Ship-Money, the Claim of Stannery, *&c.* That they would do well alſo to reflect what Conceſſions his Majeſty made at the *Iſle of Wight*; how he wooed and courted the People to obtain Peace: And that they ſhould kill their King, and ſuch a King, They ought to lay it to Heart, and conſider with themſelves; for, though they pretended Conſcience, they ſhould remember what our Saviour ſaid: That *the Time will come, when they will perſecute you and kill you, and think they do God Service.* That there was ſuch a Thing as Spiritual Pride, and Men might be overrun with an Opinion of their own Holineſs,

and

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and go by pretended Revelations, and ſay they prayed about ſuch a Thing, and found no Remorſe or Reluctance; as the Man in *Shropſhire*, who murdered his Father and Mother, when he was queſtioned for it, alledged, *he had prayed againſt it, and could not underſtand it to be a Sin.* And therefore he exhorted the Criminals to try their Spirits, and examine the Fact by the Word of God, and not think every Fancy and Imagination to be Conſcience: After which, the uſual Sentence in High Treaſon was paſſed upon them, and the Court adjourned.

Sentence paſſed on the Priſoners.

Cook tried.

The Court meeting again the 14th of *October*, *John Cook*, Solicitor to the Regicides, who preferred the Charge of High Treaſon againſt the late King, was brought to the Bar: And not challenging any of the Pannel, the firſt twelve were ſworn of the Jury. Then the Solicitor-General opened the Indictment, and obſerved that this was the Man, who exhibited that wicked Inſtrument, called *A Charge of High-Treaſon*, againſt his late Majeſty in the Name of all the People of *England:* That he aggravated the Charge, and would not ſuffer his Majeſty to ſpeak in his Defence: Told the King he endeavoured to ſpin out Delays, and deſired the Charge might be taken *pro confeſſo:* That this was the Man that preſſed the pretended Court to give Judgment againſt the King; and demanded that wicked Judgment before it was pronounced: And though he had acknowledged his Majeſty to be a Wiſe and Gracious King, yet declared, *That he muſt die, and Monarchy with him:* That this was the Priſoner's part, who had alſo received Wages, and a Reward for his Iniquity. Then the Witneſſes were called, who depoſed, That the Priſoner exhibited an Impeachment, or Parchment-Writing, to the pretended High Court of Juſtice, which was called, A Charge againſt the King; and the ſaid Charge being now produced, it was proved that *Cook*'s Hand was ſubſcribed to it: That he often interrupted his Majeſty, and prayed that the Charge might be taken *pro confeſſo*; and for ſeveral Days preſſed for Judgment againſt his Majeſty.

The Indictment opened.

The Evidence.

It was teſtified alſo that *Cook* charged his Majeſty with being guilty of the Higheſt Treaſons and Crimes, that ever were acted on the Theatre of *England*; and preſſing that Judgment might be given againſt his Majeſty, ſaid, *That it was not ſo much he, as the Innocent and precious Blood that had been ſhed, that cryed for Judgment againſt the Priſoner at the Bar* (THE KING.) And one *Starkey*, of *Gray's-Inn*, depoſed, that, diſcourſing with *Cook* about his being made Solicitor-General, he anſwered, *He was ſerving the People; that he would ſee ſtrange Things; and that he muſt wait upon God:* He did acknowledge the King was a Wiſe and Gracious Prince; but ſaid, *He muſt die, and Monarchy with him.*

Cook's Defence.

But *Cook* croſs-examining *Nutley*, one of the Witneſſes, *Nutley* depoſed, that he heard the Priſoner ſay, He hoped they did not intend to take away the King's-Life: That he (the Priſoner) laboured againſt it; and they told him, they only intended to bring him to ſubmit to the Parliament.

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The Priſoner further ſaid in his Defence, That the Words he uſed at that Proceeding, were not his own; he was directed what he ſhould ſpeak, and he hoped he might make much the ſame Plea St. *Paul* did, *That againſt* Cæſar *or againſt the Law, he had not offended at all:* For firſt, he was commanded to do what he did, and acting only within his own Sphere as a Counſellor, by the Command of the then ſupreme Power, he could not be guilty of Treaſon: Secondly, Words could not amount to Treaſon; and though it was ſaid, his Hand was to the Impeachment, he thought that was not well proved: He inſiſted further, That one who writes or ſpeaks Words dictated by another, (though they might be in their own Nature treaſonable) yet they were not Treaſon on the Writer or Speaker, becauſe they did not diſcover a traiterous Heart; and he appealed to God, if he uſed one irreverend Expreſſion towards his Majeſty, or ſtiled him, *The Priſoner at the Bar*, as the Witneſs had ſworn: That a Counſellor was to make the beſt of his Client's Cauſe, and leave it to the Court; and Counſellors did frequently engage in Buſineſs, before they rightly underſtood the Fact: He appealed to the Counſel, if they had not many Times been ſorry, that a Verdict had been given for their Client, when they diſcovered the Right lay on the other Side; and this might be his Caſe. Had it been a Time of Peace he acknowledged this would have been Treaſon; but his Majeſty being in the Power of the Army, the drawing up of a Charge againſt him, and deſiring Juſtice, and that he might be brought to a ſpeedy Trial, in order to his Acquittal, was rather a Service to his Majeſty, than Treaſon againſt him: He urged further, That what he had done in that Matter, was for his Fee, and not of Malice; though it might be called *Avaritia*, it could not be called *Malitia*; he did nothing Judicially but Miniſterially: But conſcious his Defence was very weak, he ſaid, he laid hold on his Majeſty's Declaration at *Breda*, wherein he promiſed to pardon all, who were not accepted in a free Parliament; and he obſerved, that this Convention, not being called by the King's Writ, was not ſuch a Parliament, as could make the Exception: Concluding, That human Juſtice did never puniſh ſo much for Expiation as Prevention, that others might be deterred from committing ſuch Acts; that now all Things were ſettled, there could be no Danger in ſparing him, the like Caſe could never happen again.

The King's Counſel Reply.

The King's Counſel, in their Reply to this Defence ſaid, That the Priſoner miſtook his Charge, if he thought it was only for Words; it was for compaſſing and imagining the King's Death; and the Evidence of that Charge was, his meeting in an Aſſembly of the Regicides, and the Part he bore in that Aſſembly: Nor was it a General Rule, That Words were not Treaſon; for if a Man declare the Imagination of his Heart, exhorting and perſuading Men to kill the King

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King there could not be a greater Overt-act than ſuch Words, or a clearer Evidence of his traiterous Imagination: And as to his Innocence in ſimply demanding Juſtice, they were to obſerve, That the Subject-Matter, was a Charge of High-Treaſon againſt the King; he prayed that the King, as a Traitor, might be brought to Juſtice; preſſed that the Charge might be taken *pro confeſſo:* And whether Mr. *Cook* could intend this, in order to the Acquittal of his Majeſty, he left the Jury to determine.

As to the Priſoner's laying hold on his Majeſty's Letter or Declaration from *Breda*, that could not amount to a Pardon, not being under the Broad Seal; neither would the Words it contained have amounted to a Pardon, if they had been under the Broad Seal: Beſides, it appeared by the King's Letter, that he intended ſuch as ſhould be excepted by that very Parliament his Letter was directed to, and the Priſoner was expreſly excepted by Name; his Majeſty therefore was not obliged even in Honour to ſpare him.

That the Jury ſhould conſider the Caſe as their own: The Priſoner had exhibited a Charge againſt his late Majeſty, in the Name of all the People of *England*, of whom they were Part, and they ought to let the World know, that the People of *England* had no Hand in that Charge: That they ſhould conſider how the Priſoner had hunted after the King's Life; how he had fiſhed for Evidence againſt him, aggravated the Charge, was afflicted at the Delays, and angry when he was interrupted.

And as to the Priſoner's ſaying, He pleaded for his Fee, *Judas* too had thirty Pieces of Silver, for which he hanged himſelf; and it was the higheſt Diſgrace he could throw upon the long Robe, to ſhelter himſelf under his Profeſſion: That indeed it was an Aggravation of his Crime, that he, who knew the Law ſo well, ſhould ſo groſly tranſgreſs it: That Mr. *Cook* in adviſing the Act, was as inſtrumental, as much a Traitor, as the Man in the Frock that did the Execution: That a Counſellor indeed was not always bound to know the Judge's Patent; but here was no Colour of a legal Proceeding, nothing but a mock Court of Juſtice, ſuch a one as Mr. *Cook* never met with in all his Reading: They knew of no Law under Heaven for putting the King to Death, though they endeavoured to ſhelter themſelves under a Colour of Juſtice, to do the moſt execrable Treaſon in the World.

The Chief Baron ſums up the Evidence.

The Lord Chief Baron in ſumming up the Evidence obſerved, that when *Cook* demanded *Juſtice* againſt the King, he had charged him as *A Tyrant, Traitor, Murderer and common Enemy*; that thoſe, who ſpit in the King's Face, alſo demanded *Juſtice*; but every Man knew what they meant by Juſtice: That the Priſoner had alſo urged, *That it was not ſo much he, as the Blood that had been ſhed, that cried for Judgment*; and whether the Priſoner meant a Judgment for the King's Acquittal, he left to the Jury: He took Notice alſo of the Priſoner's Anſwers to *Starkey*, when he expoſtulated with him about being concerned in the King's Murder, *(viz.) You ſhall ſee ſtrange Things; you muſt wait upon God:* This, the Chief Baron obſerved, was then the canting Language of thoſe who were about to commit ſome horrid Impiety, and from that other Expreſſion, *The King muſt die, and Monarchy with him*, it appeared it was Monarchy and Government they hated: Many of thoſe who ſat upon the late King, acknowledged he was a gracious Prince; they did not hate his Perſon any more than the Priſoner, but *Monarchy was the Thing they would behead.*

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That as to his having acted by the Authority in Being, and citing the 11 *Hen.* II. which provides, That he who ſerves a King for the Time being in his Wars, ſhall not be puniſhed; that act was expreſly againſt him: For that Act was made for the Preſervation of a King *de facto*, much more of a King *de jure?* and the Perſon they had ſtiled their Priſoner, they had owned to be their King; they charged him as King, and ſentenced him as King. That King *Henry* VIIth's Care was to preſerve even a King *de facto*, and Kingly Government; it was not in favour of an Antimonarchical Government. The Regicides proceeded againſt their own King, as their King; calling him, in their Charge, *Charles Stuart, King of England*; and therefore there was no Colour that the Priſoner ſhould have any Benefit of the Letter, or the Equity, of 11 *Hen.* VII.

Cook's Reply to the Chief Baron.

However, Mr. *Cook*, being indulged, the Liberty of replying to the Chief Baron, ſaid, Though their Lordſhips were pleaſed to lay no Weight on the Orders or Authority by which he acted; he did then act truly and conſcientiouſly, and thought that Authority would have borne him out; though the Court were pleaſed to look upon them as a parcel of People without Authority, his Judgment was not yet convinced as to that Point; and that all the Words he ſpoke were dictated to him, even thoſe, *That it was not ſo much he, as the innocent Blood, that cried for Juſtice.*

To which the Chief Baron ſaid, He made his Caſe rather worſe: That they had delivered their Opinions already; That the acting by ſuch an Authority, was ſo far from being an Extenuation, that it was an Aggravation of the Crime; That his expreſſing his Approbation of that Power, and acting under it, were the very Things with which he was charged: And the Jury, after a very ſhort Receſs, brought in the Priſoner GUILTY.

Peters's Trial.

Hugh Peters, Cromwell's Chaplain, being brought next upon his Trial, made no Challenges to the Jurors; whereupon the firſt Twelve of the Pannel were ſworn, and charged with the Priſoner: Then the King's Counſel produced their Evidence. And firſt Dr. *William Young* depoſed, That *Hugh Peters*, the Priſoner, lay ſick at his Houſe in the Year 1649, and that he remained in his Family ſix or ſeven Weeks after his Recovery, there being a great Intimacy between them; that the Priſoner, about that Time, told the Deponent, *He was ſent over from*

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New England *to foment a Civil War, and drive on their Reformation.*

That he was afterwards ſent over to *Ireland* by the Parliament, to carry on their Deſigns there, and that he had ſpent near 3000 *l.* in that Service, for which he had only received a ſmall Pittance, in Land, out of the Lord *Worceſter*'s Eſtate; That the Priſoner uſed to ſay, while he reſided with the Deponent, *It would never be well till the Lords, the Levites, and the Lawyers, were put down:* That the Priſoner was a Colonel under *Cromwell* (as well as a Preacher,) and having an Authority to raiſe Forces for the War in *Ireland*, would have had the Deponent accept a Commiſſion to ſerve under him: That the Priſoner informed the Deponent, when the late King was taken from *Holmeby-Houſe*, the Parliament had a Deſign to have ſeized *Cromwell* and himſelf; but having Notice of it, they made their Eſcape out of *London*, riding hard for it as far as *Ware*, where they conſidered how they ſhould diſpoſe of the King; and came to a Reſolution, *They would try him for his Life, and cut off his Head.*

Mr. *Starkey* depoſed, That the Head-Quarters being at *Windſor*, a little before the King's Trial, *Ireton* lay at his Father's Houſe there; and that *Cromwell* and the General Officers uſed to hold their Councils of War at his Father's; That after theſe Councils roſe, there uſed to be a private Conſultation, at which *Cromwell*, *Ireton*, the Priſoner, Colonel *Rich*, and a fifth Perſon, aſſiſted; and they generally ſat up till Two or Three in the Morning; and he believed it was this private Cabal that contrived the Buſineſs againſt the King; That the Priſoner frequently came with *Ireton*, and dined and ſupped with him, at his Father's, with the Family; and talking of the King, *Peters* uſed to ſay, *The King was a Tyrant and a Fool, and not fit to be a King; and that it was a dangerous, chargeable, and uſeleſs Office:* That *Ireton and Peters* being at Supper at his Father's, when News came that the King was made Priſoner in the *Iſle of Wight*, his Father, inſtead of ſaying *God ſave the King, Prince, and Realm*, as he uſually did after his Grace, (at which *Ireton* and *Peters* uſed to laugh) ſaid, *God ſave the King's moſt excellent Majeſty, and preſerve him out of the Hands of all his Enemies:* Whereupon *Peters* ſaid, *Old Gentleman, your Idol will not ſtand long.*

Walkley depoſed, That he ſaw *Peters* at the Conſultations with the Regicides, in the Painted-Chamber, before the King's Trial; That when the King was brought to *London*, he ſaw him riding in a triumphant Manner before the Coach the King was in: And at another Time, he ſaw *Peters* marſhalling the Soldiers in St. *James*'s-*Park*, and heard him ſay, *If we can but keep up our Army ſeven Years longer, we need not care for the King and all his Poſterity.*

Simpſon depoſed, That he ſaw the Priſoner at ſeveral Conſultations concerning the King; and that, at the King's Trial, he heard him bid Colonel *Stubberd* to cry out, *Juſtice, Juſtice, againſt the Traitor at the Bar:* That the Soldiers cried out as they were directed; and, as the King was going back to *Cotton-Houſe*, ſome of them ſpit in his Face, which he wiped off, and ſmiled.

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Richardſon depoſed, That he ſaw the Priſoner ſtanding in the High Court of Juſtice; That he commended *Bradſhaw*'s Carriage; and holding up his Hands, ſaid, *This is a moſt glorious Beginning of the Work.* And Sir *Jeremy Whichcot* depoſed, he heard the Priſoner ſay, *I cannot but look upon this Court with great Reverence, for it doth reſemble, in ſome Meaſure, the Trials that ſhall be at the End of the World by the Saints:* That the Priſoner ſeldom ſpoke of the King, but he called him Tyrant; and ſaid, he would have preached before him (the King;) *but the poor Wretch would not hear him.*

Nunnelly depoſed, That he ſaw *Peters* in the Banquetting-Houſe, about an Hour before the King was beheaded; that he went out upon the Scaffold, and came off again; and whiſpering the Joiner who erected it, the Joiner immediately knocked down four Staples upon the Scaffold: That after the King's Head was cut off, the Deponent ſaw the Vizards go into a Chamber, and he thought he ſaw *Peters* come out of the ſame Chamber an Hour afterwards; but he was ſure he ſaw him go with the Hangman to take Water.

Stephen Clough depoſed, That *Peters*, in his Prayer before a Council of Officers at *Weſtminſter*, ſaid, *O Lord, What a Mercy is it to ſee this great City fall down before us! And what a Stir is there to bring this Great Man to Trial; without whoſe Blood he will turn us all into Blood if he reign again!*

Beaver depoſed, That the Priſoner preaching before the two Houſes, on a Faſt-Day, a little before the Act was made for the King's Trial, he ſaid, "It was a very ſad thing, "that it ſhould be made a Queſtion among "us, as among the old *Jews*, Whether our "Saviour Jeſus Chriſt muſt be crucified; "or that *Barabbas* ſhould be releaſed, the "Oppreſſor of the People: O Jeſus (ſaid he) "where are we, that That ſhould be a Que-"ſtion? And becauſe you ſhould think, my "Lords and Gentlemen, that it is a Que-"ſtion, I tell you it is a Queſtion: I have "been in the City, which may very well be "compared to *Jeruſalem*; and I profeſs theſe "fooliſh Citizens, for a little Trading and "Profit, will have Chriſt (pointing to the "Red-coats on the Pulpit-Stairs) crucified, "and that great *Barabbas*, at *Windſor*, re-"leaſed. I do not much mind what the "Rabble ſay; but I have been with my "Brethren, the Clergy, in the Aſſembly, "and I perceive they are for crucifying "Chriſt alſo, and releaſing *Barabbas*. O "Jeſus, what ſhall we do now! Then ad-dreſſing himſelf to the Lords and Commons, he ſaid, "You are the *Sanhedrim*, the great "Council of the Nation; therefore you "muſt be ſure to do Juſtice; it is from you "we expect it: You muſt not only be the "Inheritors of your Anceſtors; but you "muſt do as they did: They oppoſed tyran-"nical Kings, and deſtroyed them. It is "you that we chiefly expect Juſtice from.

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"Do not prefer the great *Barabbas*, *Murderer*, *Tyrant and Traitor*, before these poor Hearts (pointing to the Soldiers again:) And that for two or three Hours he harangued his Audience, pressing them to bring the King to a speedy Trial, and to punish him capitally.

Mr. *Chace* deposed, That he heard the Prisoner preach before *Cromwell* and *Bradshaw*, on the 20th of *January*, 1648, on that Text in the Psalms, *Bind your Kings in Chains, and your Nobles in Fetters of Iron:* And observed, that the next Psalm had twelve *Hallelujahs*; which were intended, he said, to express their Joy, *That Kings were bound in Chains*, &c. He told them also the common Story of the Mayor that laid the Bishop's Man by the Heels for being Drunk; and when the Bishop complained of it, the Mayor answered, There was an Act of Parliament for it, and neither the Bishop nor his Man were excepted out of it. And so (says *Peters*) Here he is a great talk in the World; What, will you cut off the King's Head; the Head of a Protestant Prince? Turn to your Bibles, and you shall find, *Whosoever sheds Man's Blood, by Man shall his Blood be shed.* As the Mayor said of the Bishop and his Servant, I see neither King *Charles*, nor Prince *Charles*, nor Prince *Rupert*, nor Prince *Maurice*, *nor any of that Rabble*, excepted out of it; and added, *This is the Day that I, and many Saints of God, have been praying for these many Years:* And the Deponent observed, that *Cromwell* laughed heartily at these Flights.

Tongue deposed, That he heard the Prisoner preach at *Whitehall*, the 21st of *January*, 1648, on that Passage, *Bind your Kings in Chains, &c.* And said, He hoped to see such another Day as the Day before *(when the King's Trial began:)* That he blessed God the Lower House was purged; and assured them, the House of Lords would down suddenly.

The Prisoner's Defence.

The Prisoner in his Defence said, He was sent from *New England*, to solicit the Affairs of that Country here: And indeed, at the Importunity of the *London* Ministers, after his Arrival, he was active in the Troubles that followed; but they were much deeper engaged in that Affair than he was: He was sorry to hear himself charged with that Behaviour towards the late King, and begged Pardon for his Folly and Weakness; but said, he had no Malice or Mischief in his Heart against him: That he had always acted with Honour and respect towards his Majesty, particularly when he was at *Windsor*; and had proposed three Ways to his Majesty to extricate himself out of the Difficulties he was in; but he did not approve of them: That he was none of those who sat in the High Court of Justice, or brought the King to that unhappy End: And lastly, He observed, that there was but a single Witness to any one Fact.

A Reply to his Defence.

To which the King's Counsel replied, That some Facts had been undeniably proved against him: That the Meeting and Consulting together about the King's Death; or the giving Aid, Comfort, or Encouragement to those Traitors, made him guilty of the whole Charge, in the Eye of the Law; though he did not sit in that High Court, or sentence the late King: And that, whatever Speeches he had uttered, either in the Pulpit, or out of it, tending to Sedition and Rebellion, were such Overt-act as proved the treasonable Imagination of his Heart, with which he was charged: That though there ought to be two Witnesses in Treason, there need not be two to every Fact: but in his Case there had been several Witnesses produced to one Fact: so that this Objection carried no manner of Weight with it.

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That his being in Arms, against his Majesty, had not only been proved by several Witnesses; but he had confessed it. It was proved also, that he had called the Day of his Majesty's Trial, *A glorious Day*, and resembled it to that Great Day, wherein the Saints should judge the World; that he had often prayed for it also; so that no Man could be said more justly to have conspired and contrived the Death of the King, than this miserable Priest had done: The Honour of the Pulpit therefore ought to be vindicated. His Death would preach better than his Life had done; it might be a Means to convert many a deluded Man, whom his Preaching had seduced; for several had been brought to that Bar, who averred, that what they had done, was *in the Fear of the Lord*; and now it appeared who taught them, and led them into these pernicious Errors: They hoped therefore the Court would make an Example of this Carnal Prophet: And the Jury being withdrawn, in a very little Time found the Prisoner guilty. Whereupon the King's Counsel moved, that *Cook* and *Peters* might receive Judgment together: And the Lord Chief Baron having made a Speech to the Prisoners, wherein he observed they had had a liberal Education, and therefore could not be ignorant how grosly they had offended against the Laws of God and Man, by being instrumental in the King's Murder, pronounced Sentence on them as Traitors: And then the Court adjourned.

Peters convicted.

Cook and Peters condemned.

Axtel's Trial.

On the 15th of *October*, *Daniel Axtel* was brought to the Bar; and a Jury being sworn, and charged with the Prisoner, the King's Counsel opened the Indictment and the Evidence: After which, the Witnesses were produced, who deposed, That Colonel *Stubberd* and *Axtel* commanded the Guards that were drawn up in *Westminster-Hall*, for the Security of the pretended High Court of Justice, at the King's Trial: That upon exhibiting the Charge against the King, in the Name of all the Commons of *England*, a Lady, (said to be the Lady *Fairfax*) cried out, *It was a Lie*; *not a Quarter of the People were concerned in it:* Oliver Cromwell *was a Rogue and a Traitor:* Whereupon the Court called to the Guard, and *Axtel* their Commander, ordered some of his Soldiers to present their Pieces at the Lady, and bid her unmask. Other Witnesses deposed, that *Axtel* said, *Down with the Whores*; *shoot them:* That he was more active than any of the Officers, and stood laughing with his Soldiers, and scoffing aloud when the King urged to be heard; and when the King bid his pre-

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tended Judges *remember he was their lawful King*, *Axtel* ordered the Soldiers to cry out, *Juſtice, Juſtice!* and beat thoſe that refuſed; and that the laſt Day of the Trial, he made his Soldiers cry, *Execution, Execution!* A Witneſs alſo depoſed, that the Priſoner commanded a Company of Soldiers in the Banquetting-Houſe, during the King's Execution; and that he was the Man that ſent for the Executioner. Another Witneſs teſtified that *Axtel* ſaid, *Hewlet* beheaded the King: And Col. *Huncks* made Oath, that *Cromwell* bidding him (the Deponent) ſign the Order for the King's Execution, and threatning him for refuſing it, *Axtel* ſaid to the Deponent, *I am aſhamed of you; the Ship is now coming into Harbour, and will you ſtrike Sail before you come to Anchor?*

Axtel's Defence.

Axtel in his Defence ſaid, that *Huncks* was a perfect Stranger to him, and that he did not remember his having ſaid any ſuch Words as he had teſtified: That the Statute of 25 *Edw.* III. on which he was indicted, concerned only private Perſons, who compaſſed the King's Death: But here a War was entered into, an Army raiſed by Authority of Parliament, who had declared the *Militia* was of Right in them: That he acted by Commiſſion from the Parliament's General; a Parliament called by the King's Writ, choſen by the People, and by an Act that could not be diſſolved, but by their own Conſent. That this Parliament was in being when the King's Trial happened, and was not yet legally diſſolved: He conceived, that their Authority was acknowledged at Home and Abroad, and the Judges, the Interpreters of the Law, acted by their Authority; and he hoped this was ſufficient to bear him out: That what he had done was as a Soldier, he derived his Power from his General, who had his from the Fountain, namely, from the Lords and Commons: If he was upon the Guard at the King's Trial, it was by the Command of his General, not voluntary: He was not a Contriver, Counſellor, Parliament-Man, or any of the Judges that ſentenced the King; nor had any Hand in his Execution; and if it was ſuch an Offence to have a Command in the Army, General *Monk* and the other Generals were as Criminal as he; and all the People, who acted by the ſame Authority in the three Nations: That if he was guilty of Treaſon, the Commons in Parliament began the Treaſon: And if the Repreſentative Body were Traitors, then were the People whom they repreſented ſo too, and there would not be found a Jury to try the Cauſe. And though it had been objected to him, that they had deſtroyed both Lords and Commons, before the Fact was committed: The Commiſſion, which authorized him to obey his General, was given him while the Lords and Commons ſat in Parliament; and he did but his Duty in being with his Regiment in the Hall: If the General had commanded him to take that Poſt, he muſt have died if he had refuſed; and it was hard he ſhould be in the ſame Danger when he obeyed.

He ſtill inſiſted, that he had not adviſed, or compaſſed the King's Death; that he neither Sentenced him, nor ſigned the Warrant for his Execution; nor was he concerned in the Violence put upon the Houſe of Commons: They were his Superiors that put that Force upon the Houſe; he was then an inferior Officer: And as to what had been ſworn, concerning ſilencing the Lady, who made the Diſturbance, he ſaid, if the Lady talked impertinently, and he deſired her to hold her Tongue, he hoped this was not Treaſon; eſpecially as he was commanded on pain of Death to keep the Peace.

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As to the Witneſſes depoſing he laughed and ſcoffed, while others ſighed: He believed he had as deep a Senſe of what was tranſacted that Day as others; but if he had ſmiled, he hoped that was not Treaſon: And he hoped it would appear he beat his Soldiers for crying *Juſtice, Juſtice*, and not to make them cry *Juſtice:* However, if he did encourage them to demand Juſtice, and Execution, the Execution of Juſtice was a glorious Thing; Juſtice was one of the great Attributes of God, and the deſiring of it could be no Crime. The ſending for the Executioner, he abſolutely denied, and averred he was never at any Conſultation about the King's Death. This he ſaid was managed by *Ireton*, *Harriſon*, and *Cromwell*, among themſelves: Nor could he ever tell any one that *Hewlet* executed the King, being perfectly ignorant what Perſons were concerned in the Execution.

He obſerved further, That the Words *Juſtice* and *Execution*, being ſpoken without Application to any Perſon or Thing, were of an uncertain Signification, and might bear a good, as well as a bad Conſtruction; and in Favour of Life, the beſt Senſe ought to be put upon them. And laſtly, he inſiſted that his Majeſty had promiſed to pardon all, that were not excepted by Parliament, which muſt be intended, he conceived, of a *legal* Parliament, called by the King's Writ, which this was not, and conſequently could not except him out of the Pardon promiſed by the King.

The Reply to Axtel's Defence.

The King's Counſel, in their Reply to the Priſoner's Defence, ſaid, they did not charge him with what he had done by Virtue of his Commiſſion, but with thoſe violent Acts of encouraging the Soldiers to cry for *Juſtice and Execution*; and thoſe other Acts, which manifeſted his Malice againſt the King: That he was not indicted for levying War, but for compaſſing the King's Death; and the overt-Acts, above-mentioned, were given in Evidence to prove it: Nor could there be any Excuſe for committing Treaſon; his Commiſſion could not Warrant his doing a Treaſonable Act: He was obliged to take Notice whether the Authority, by which he acted, was good or not; neither did his Commiſſion empower him to put the King to Death; but he was obliged, by the Tenor of it, to preſerve him: That thoſe very Lords and Commons, under whom he would ſhelter himſelf, made Proteſtations and Declarations, and had impoſed and taken Oaths, for the Preſervation of the King's Perſon, which he could not but take Notice of: He muſt remember

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member alſo, that the Army came with their Swords in their Hands to the Houſe, and turned out whom they pleaſed, excluding far the greateſt Part of the Members, and laid the Lords aſide: After which, Forty-ſix of the Commons took upon them to ſit, and only Twenty-ſix voted that Ordinance, which he pretended to act in Obedience to: And laſtly, that it was impoſſible to miſtake what he meant by crying for *Juſtice and Execution:* Whereupon the Jury, after a very ſhort Receſs, brought the Priſoner in *Guilty*.

Hacker's *Trial.*

Then Colonel *Francis Hacker* was brought upon his Trial, and making no Challenges to the Jurors, the firſt twelve in the Pannel were ſworn, after which the King's Counſel opened the Indictment and produced their Witneſſes.

The Evidence.

Colonel Tomlinſon, depoſed, That Colonel *Hacker*, the Priſoner, was one of the Halberdiers that guarded the King at *Cotton-Houſe*, and from thence to his Trial, before the pretended High-Court of Juſtice in *Weſtminſter-Hall:* That the Day appointed for the King to die, the Halberdiers brought his Majeſty through the *Park* from St. *James's* to *Whitehall*; that Colonel *Hacker*, by Virtue of the Warrant for the King's Execution, led him out of *Whitehall* to the Scaffold, erected before the Banquetting-Houſe.

Mr. Secretary *Morrice*, and the Lord *Anneſley*, depoſed, That the Priſoner *Hacker* acknowledged before them, that he ſigned the Warrant to the Executioner, to behead the King; but ſaid, he did not remember the Name of the Man: Another Witneſs depoſed, that Colonel *Hacker* ſeemed to have the principal Command on the Scaffold, when the King was beheaded.

Hacker's *Defence.*

The Priſoner ſaid in his Defence, That he was a Soldier under Command, and what he had done was, by Virtue of a Warrant from the High-Court of Juſtice: That he did not deliver the Warrant, or Order to the Executioner, or knew who he was; and was neither Counſellor, Abettor, or Adviſer of the Fact.

The Reply of the Court.

But the chief Baron, in his Directions to the Jury, told them, If the Priſoner who brought the King to the Scaffold, and who had the Care and Management of the Buſineſs, and ſigned the Warrant to the Executioner, was not guilty of compaſſing the King's Death, no man could be ſaid to be guilty; and the Jury being withdrawn a little while, brought in their Verdict, that the Priſoner was GUILTY.

He is Convicted.

Hulet's *Trial.*

Then *William Hulet*, or *Hewlet*, was ſet to the Bar; and the Jury being ſworn, the King's Counſel took notice on opening the Evidence, that this was the Man in the Frock and Vizard, that cut off the King's Head: To prove which *Richard Gittens* was ſworn, who depoſed, that he and *Hulet*, were Serjeants in the ſame Regiment twelve or thirteen Years: That a Day or two before the King was murdered, Colonel *Hewſon* commanded eight and thirty Serjeants (of which Number were the Deponent and the Priſoner) to take an Oath of Secrecy; which when they had done, he demanded if any of them would undertake to Execute the King, promiſing a Reward of an hundred Pounds, and Preferment in the Army, to him that ſhould do it: And every Man refuſed; however, they underſtood afterwards, that *Hulet* accepted the Office: That the Day the King was murdered, the Deponent was one of the Guards drawn up in the Banquetting-Houſe: That he got upon the Scaffold, when his Majeſty was brought thither, and heard his Majeſty ſay to one of the Executioners, *Is the Block faſt?* And *Hulet* (as the Deponent believed) was the Man who fell upon his Knees, and asked the King forgiveneſs: The Deponent thought it was *Hulet* by his Speech, and the proportion of his Body; and what confirmed him in that Opinion was, that *Hulet* was not ſeen in the Regiment that Day: But that the Executioner, whoever he was, had a pair of Freeze Trunk Breeches and a Vizard on, with a Grey Beard; and Colonel *Hewſon* uſed afterwards to call *Hulet Father Grey-Beard*, as did moſt of the Soldiers in the Army.

Stammers depoſed, that *Hulet* was Captain-Lieutenant of Colonel *Hewſon*'s own Troop, and that he (the Deponent) entering himſelf in the ſame Troop at *Dublin*, about nine or ten Years ſince, *Hulet* ſome little Time after, ſent for him to his Chamber, and among other Converſation told him, that he cut off the King's Head, and had an hundred Pounds for it: But *Hulet* deſiring him to name the Man he ſent for him, *Stammers* ſaid he could not remember the Man.

Captain Toogood depoſed, that in the Year 1650, being in *Dublin* Caſtle with Colonel *Hewſon*, *Hulet* the Priſoner came in, and the Deponent obſerving an extraordinary Familiarity between them, upon *Hulet's* going away, asked *Hewſon*, who he was; and the Colonel anſwered, he had made him his Lieutenant, from a Serjeant: He was a mettled Fellow; it was he that did the King's Buſineſs on the Scaffold: The Deponent added, that Colonel *Pretty* alſo told him, that *Hewſon* aſſured him, *Hulet* either cut off the King's Head, or held it up, and ſaid, *Behold the Head of a Traitor:* And that the Deponent talking with *Hulet* himſelf at *Carlow* in *Ireland*, concerning the Execution, *Hulet* ſaid, *What I did, I will not be aſhamed of*; *If it were to do again, I would do it:* That diſcourſing with *Hulet* at another Time, concerning the King's Death, he ſaid, it was true, he was one of the Perſons *diſguiſed* upon the Scaffold: And if the King had refuſed to ſubmit to the Block, there were Staples fixed in the Scaffold, and he had that about him, that would have compelled him to ſubmit: And at another Time *Hulet* ſaid, he ſhould not deny the Buſineſs of the King's Death, call him to an Account when they would.

Davis depoſed, that drinking at a Tavern in *Dublin* with Captain *Hulet*, and asking him, If he took up the King's Head, and ſaid *Behold the Head of a Traitor*; *Hulet* anſwered, it was a Queſtion he never reſolved any Man, though often demanded: However, it was no matter who ſaid it; *I ſay it now, It was the Head of a Traitor.*

Lieutenant

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Lieutenant Colonel Nelſon, depoſed, that diſcourſing with Colonel *Axtel*, concerning the Perſon that beheaded the King, *Axtel* ſaid, they would not employ Men of mean Spirits, they did not know; but pitched upon *Hulet* and *Walker*, two ſtout Fellows, their Serjeants: That *Walker* gave the Blow, and *Hulet* held up the Head; and they had 30 *l.* a piece, or 30 *l.* between them.

Benjamin Francis depoſed, that the Vizards were cloathed alike in woollen Frocks, cloſe to their Bodies, like Butchers: One of them had a Black Beard, and the other a Grey Beard and Peruke; and that *Grey-Beard*, who cut off the King's Head, was about the Size of *Hulet* the Priſoner; and *Burden* depoſed, that *Hulet* was not ſeen among the Soldiers, either the Day the King was murdered, or the Day after.

Hulet's Defence.

The Priſoner in his Defence ſaid, He never diſcourſed with any one of the King's Death, but *Stammers*; who charging him with being one of the Vizards, he anſwered, you do me wrong; and *Stammers* ſaying it was a juſt Act, he (the Priſoner) replyed, whether it was ſo or not, he had nothing to do to juſtify it.

He ſaid further, that he could prove by a very good Token, that he was in another Place when the King died; for he and ſeven or eight Serjeants more were made Priſoners that Day, becauſe they refuſed to be upon the Scaffold; and that he would prove by Forty Witneſſes, that it was another Man that did the Fact, if they would give him Time.

The Evidence for the Priſoner.

Then ſeveral Witneſſes were called on behalf of the Priſoner, and particularly one of the Sheriffs Officers, who depoſed, That drinking with the common Hangman, a little after the King died, and asking him if he did the Fact, The Hangman anſwered, God forgive me, I did it; and I had forty Half-Crowns for my Pains.

Smith, a Waterman, depoſed, That, as ſoon as the Blow was given, a File of Musketeers brought the Hangman to the Deponent's Boat, and the Soldiers ſaid, Waterman away with him quickly: That when he and his Mate had got the Hangman ſome Diſtance from the Shoar, they asked him, if it was he that cut off the King's Head, and he ſaid No, as I am a Sinner to God; and trembled every Joint of him. He ſaid, he was fetched to *Whitehall* indeed by a Troop of Horſe, and kept cloſe Priſoner there; and they had his Inſtruments, but he did not do it: That the Deponent thereupon ſaid, he would ſink his Boat, if he did not tell him true; but the Hangman perſiſted to deny it with ſeveral Proteſtations.

Cox depoſed, That when the Lord *Capel* was Beheaded, he asked the Hangman if he did not cut off his Maſter's Head, and the Hangman ſaid Yes; and told him, that was the Axe: Whereupon the Lord *Capel* took the Axe, and kiſſed it; and giving him five Guineas ſaid, *Sirrah, Wer't thou not afraid?* and the Hangman anſwered, they made him cut it off, and he had thirty Pounds for his Pains.

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Other Witneſſes depoſed, They heard the common Hangman acknowledge, he cut off the King's Head. Then the Priſoner deſired he might have a Fortnights Time to produce the reſt of his Witneſſes; but was told, that could not be granted: And the Jury withdrawing and debating the Matter a conſiderable Time among themſelves, brought in the Priſoner *Guilty*; and then the Court adjourned.

Hulet convicted.

Fifteen Priſoners tried before one Jury.

The Court ſitting again at the *Old-Bailey* the 16th of *October*, *Edmund Harvey*, *Iſaac Pennington*, *Henry Marten*, *Gilbert Millington*, *Robert Titchburne*, *Owen Roe*, *Robert Lilburn*, *Henry Smith*, *John Downes*, *Vincent Potter*, *Auguſtine Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, and *Thomas Wayte*, were brought to the Bar, and one Jury charged with them all. Mr. *Harvey*, inſtead of making a Defence, confeſſed that he did ſit in the pretended High Court of Juſtice; but ſaid, he did not ſign the Warrant for Beheading his Majeſty. He produced two Witneſſes alſo, who depoſed, he endeavoured to prevent the Sentence, and that he was under a great Concern when it paſſed; and tendering a Petition to the Court, that they would interceed in the Behalf of himſelf, his Wife, and thirteen Children, the Court promiſed to preſent the Petition to his Majeſty.

Harvey's Confeſſion.

Iſaac Pennington, the ſeditious Alderman, alſo confeſſed, that he ſat in the pretended High-Court of Juſtice; and endeavoured to excuſe himſelf, by alledging, he was drawn in by others, and had no Malice againſt his Majeſty; and made a Merit of it, that he abſolutely refuſed to ſign the Warrant for beheading of him, though he was much importuned to do it.

Pennington's Confeſſion.

Henry Marten confeſſed the Fact; but ſaid, he did not do it *maliciouſly*, *murderouſly*, and *traiterouſly*, as was laid in the Indictment: To which Mr. Solicitor replied, That *Marten* thought he might ſentence the King to Death, and ſign a Warrant for his Execution, *meekly*, *innocently*, *charitably*, and *honeſtly*; and becauſe he endeavoured to wipe off the Malice, they would prove that he did it *merrily*, and was in *great Sport* at the Time of ſigning the Warrant for the King's Execution.

Marten's Trial.

The Evidence.

Ewer depoſed, That being in the Painted-Chamber, the 29th of *January*, 1648, when the Warrant for the King's Execution was ſigned, he ſaw *Cromwell* mark *Marten*'s Face with a Pen, and *Marten* marked *Cromwell*'s Face.

Sir *Purbeck Temple* depoſed, That at a Conſult of the Regicides, in the Painted-Chamber, juſt before the King's Trial, *Cromwell* ſaid, the firſt Queſtion the King would ask, would be, *By what Authority they tried him*; and demanded, what Anſwer they ſhould give to it? And that, after ſome Pauſe, *Marten* the Priſoner ſaid, *In the Name of the Commons in Parliament aſſembled, and all the good People*

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People of England; which was the Anſwer afterwards made to his Majeſty, in their Mock-Court in *Weſtminſter-Hall.*

Marten's *Defence.*

Marten, in his Defence, ſaid, That according to the little Law he had, no Fact could be a Crime in itſelf, but as it was circumſtantiated; and that his being in Sport when the Warrant was ſigned, did not imply Malice: That the Commiſſion they acted by, was in the Name of the Commons aſſembled in Parliament, the then ſupreme Authority: And he that gave Obedience to the Supreme Power *de facto*, whether it was ſo *de jure*, or not, might be deemed of a peaceable Diſpoſition, and was far from being a Traitor. That the Statute of *Henry* VII. indemnified thoſe that were in Arms for a King *de facto:* And if the Supreme Officer *de facto* might juſtify a War, he preſumed the Supreme Authority of *England* might juſtify the erecting ſuch a Judicature, though it was but an Authority *de facto*. And as to the Objection, that it was but a Third Eſtate, and a ſmall Part of that; yet it was all that was extant: And he had heard Lawyers ſay, where Commons were appurtenant to a Tenement, and the Tenement burnt down, ſo that only a ſmall Stick remained, the Commons belonged to that one Stick, as if the whole Tenement was ſtanding: That the King was not then ſuch a King, whoſe Peace, Crown, and Dignity, were concerned in publick Matters; he was not then in the Execution of his Office, but a Priſoner: He, the Priſoner, had then, as now, a peaceable Diſpoſition, and Reſolution to ſubmit to the Government that God had ſet over him. He thought his preſent Majeſty's Title the beſt under Heaven; for he was called in by the Repreſentative Body of the Nation; and, whether his Life were long or ſhort, he ſhould always pay Obedience to him. He confeſſed he did adhere heartily to the Parliament's Army; and his Life was at the King's Mercy; and if the King pleaſed to give him his Life, he ſhould lie under a double Obligation to his Majeſty; and concluded with obſerving to the Jury, That it was as much the Intereſt of the Crown, that the Innocent ſhould be acquitted, as the Guilty condemned.

The King's Counſel reply.

Then Mr. Solicitor having ſummed up the Evidence, ſaid, Gentlemen of the Jury, what does the Priſoner ſay, in his Defence, more than this? The Fact I have committed is ſuch, that I durſt not call it Innocent; but would have you believe it ſuch. Was it your Intention, Gentlemen, that the King ſhould be tried, as the Priſoner moved? It will concern you, therefore to declare, that the People of *England* do abhor theſe Facts and Principles: All that the Priſoner has ſaid is, That there was an Authority of his own making, whereby he becomes Innocent; but we hope out of his own Mouth you will find him *Guilty.*

Millington's *Confeſſion.*

Gilbert Millington confeſſed himſelf guilty; but ſaid in his Excuſe, that he was over-awed by the then Powers; and preferred a Petition for Mercy, which was accepted.

Titchburn's *Confeſſion.*

Robert Titchburn alſo acknowledged his Offence; but ſaid he had no more Malice againſt his Majeſty, than againſt the Wife of his Boſom: That he was ignorant of the Law, *&c.* and begged for Mercy.

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Owen Roe, confeſſed his ſitting in the Mock-Court of Juſtice, and ſigning the Warrant for the Execution; but ſaid he was an Ignorant Tradeſman, led away by others; and threw himſelf at the King's Mercy.

Roe's *Confeſſion.*

Robert Lilburn acknowledged his Guilt; but urged Ignorance in the Laws as his Excuſe.

Lilburn's *Confeſſion.*

Henry Smith confeſſed the Crime alſo, and ſaid he was over-awed by the Powers then in being; and begged the Court would be Mediators for him to his Majeſty.

Smith's *Confeſſion.*

Then the Lord Chief Baron ſummed up the Evidence, as to *Harvey*, *Pennington*, *Marten*, *Millington*, *Titchburne*, *Roe*, *Lilburn*, and *Smith*; and the Jury found them all GUILTY.

Eight of the Regicides convicted.

After which *John Downes* was brought to the Bar, who acknowledged his ſitting in the pretended High Court of Juſtice; but ſaid he was thruſt into the Number of the King's Judges, and was never at any Conſultation about the Matter: That it was he that moved ſo paſſionately, the King might be heard before the Parliament, and cauſed the Court to be adjourned; whereupon *Cromwell* ſtormed, and ſaid, ſure *Downes* did not know, that they had to do with the moſt hard-hearted Man upon Earth: That it was not fit the Court ſhould be interrupted by one peeviſh Fellow: That the Bottom of it was, he would fain ſave his old Maſter, and threatned him ſeverely.

Downes's *Confeſſion.*

Upon which the Lord Chief Baron obſerved, That notwithſtanding theſe Convictions, the Priſoner proceeded to ſign the Warrant for beheading the King.

Vincent Potter confeſſed his ſitting in the pretended Court, and ſigning the Warrant; but ſaid he was not concerned in the Contrivance; and threw himſelf upon the King's Mercy.

Potter's *Confeſſion.*

Auguſtine Garland confeſſed his ſitting in the Court, and ſigning the Warrant for the Execution.

Garland's *Confeſſion.*

The King's Counſel anſwered, They would not accept his Confeſſion, for they would prove that he was one of the Men that ſpit in the King's Face: Whereupon *Clench* was ſworn, and depoſed, That on the Day of the Sentence, when they were hurrying the King away, *Garland* came by, and ſpit in his Majeſty's Face; and the Witneſs being asked, if he did it on Purpoſe, anſwered, *I ſuppoſe he did it ſomewhat ſuſpiciouſly in that way: Garland* replied, He did not know he was near the King, *(which ſeems to admit he did it, whether accidentally, or not;)* and if he was guilty of that Inhumanity, deſired no Favour of God Almighty. He confeſſed, however, that he was in the Chair, when the Act paſſed for trying the King; but ſaid, he was forced into it; and what he had done was out of Fear of the Powers then in being: That he never had any Malice againſt his Majeſty, or ſhewed any diſreſpect to him or his Friends.

The Evidence againſt him.

His Excuſe.

Simon

Meyne's Confeſſion.

Simon Meyne alſo confeſſed his ſitting in the Court, and ſigning the Warrant for the King's Execution; but ſaid he was under a Force, and threatned in caſe he refuſed.

J. Temple's Confeſſion.

James Temple made the ſame Confeſſion; and tendered a Petition for Mercy.

P. Temple's Confeſſion.

Peter Temple made the like Confeſſion; but pretended he had no Malice in his Heart againſt the King.

Wayte's Confeſſion.

Thomas Wayte confeſſed his ſitting in the Court, and ſigning the Warrant for beheading his late Majeſty; but ſaid he was drawn in, and trepaned; and offered a Petition to the King and both Houſes of Parliament for Mercy, which was accepted.

Haveningham's Confeſſion.

William Haveningham confeſſed his Sitting in the pretended Court; but ſaid he was under a Force; and that he did, however, refuſe to ſign the Warrant for ſummoning the Court, and for the King's Execution; and begged the Court to intercede for him to the King and Parliament for Mercy.

Eight more convicted.

Then the Jury withdrew, and in a little time returned with their Verdict, That *John Downes*, *Vincent Potter*, *Auguſtine Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, *Thomas Wayte*, and *William Haveningham*, were all GUILTY.

Sentence paſſed on 13 Regicides.

After which, Sir *Hardreſs Waller*, *Fleetwood*, *Hacker*, *Axtel*, *Hulet*, *Pennington*, *Marten*, *Millington*, *Titchburne*, *Roe*, *Lilburn*, *Smith* and *Harvey*, being called to Judgment, the Lord Chief Baron acquainted them, That although he was to paſs Sentence of Death upon all; yet as to all but three of them Execution was to be ſuſpended, till another Act of Parliament ſhould paſs for that Purpoſe: And as to Mr. *Haveningham*, one of the three, he thought no Order would ſuddenly be given for his Execution; but as to *Axtel* and *Hacker*, He ſaid there was no Room for them to hope for Mercy.

The Execution of all but three of them ſuſpended.

The Lord Chief Baron's Speech to the convicted Regicides.

Then he put the Priſoners in mind of the Oaths of Allegiance they had taken to his late Majeſty; and that it had been declared by Act of Parliament, *That the People, neither collectively or repreſentatively, had any Coercive Power over the Perſon of the King:* That, in the Oath of Allegiance, they had acknowledged the King to be Supreme, conſequently there could be no Power co-ordinate with him, much leſs ſuperior to him: That no leſs than ten Statutes called the Crown of *England* an Imperial Crown; and that of 24 *Hen.* VIII. *cap.* 12. declared, *It was ſubject to none but God Almighty.* And ſo, 16 *R.* 2. *&c.* That the King of *Poland*, indeed, took an Oath at his Coronation, with a Condition, That if he did not govern according to certain Rules, the People ſhould be freed from their Allegiance: But the King of *England* was King before he took his Coronation-Oath; and did not take it upon any Condition, or was accountable to any but God for his Actions: That the Law declares, *The King can do no Wrong:* Not but that the King might have the Imbecilities and Infirmities of other Men; but the King in his ſingle Perſon, could do no Wrong, ſuch as would make him obnoxious to the Laws, or accountable to any: But if the King commanded another to beat any Perſon, or diſſeize him of his Lands, there was a Remedy againſt ſuch a Perſon, though none againſt the King. The Law preſerved the *Perſon* of the King untouched; but what was done unlawfully by his Miniſters, there was a Remedy againſt his Miniſters, for: That the King was ſtiled in our Law Books, *Caput Reipublicæ*, *Salus populi*, *The Lieutenant of God*, *&c.* And the *Spencers* Treaſon, That the King might be compelled to yield to the People's Demands, had been condemned by two Acts of Parliament: That he did not preſs this, to inſinuate that the King might do what he would; but to ſhew them that the *Perſon* of the King was Sacred, and not to be touched: And having exhorted the Priſoners to repent of their horrid Treaſons, he pronounced Sentence on all of them, except *Haveningham*, on whom Judgment was pronounced the 19th Inſtant.

The ten Regicides executed.

Of all the Regicides, there were but ten executed about this Time, *viz.* *Harriſon*, *Carew*, *Cook*, *Peters*, *Scot*, *Clement*, *Scroop*, *Jones*, *Hacker*, and *Axtel*; as to *Hulet*, who was charged with cutting off the King's Head, the Evidence was held deficient.

Harriſon the firſt.

Harriſon was executed at *Charing-Croſs* on the 13th of *October*; *Carew* on the 15th of the ſame Month; *Cook* and *Peters* on the 16th; *Scot*, *Gregory*, *Clement*, *Scroop*, and *Jones* on the 17th; all at *Charing-Croſs*: But *Axtel* and *Hacker* were executed at *Tyburn* the 19th Inſtant.

Their Behaviour at their Execution.

Moſt of them died impenitent, and gloried in the Murder of their Sovereign. *Harriſon* cryed out as he was going to Execution, *That he went to ſuffer in the moſt Glorious Cauſe that ever was in the World; and that there was more of God in it than Men were aware of.* *Carew* declared, *That what he had done was of the Lord; and if it were to be done again, he would do it.* *Cook*, while he ſtood upon the Ladder, ſaid, *The moſt glorious Sight that ever was ſeen in the World was, Jeſus Chriſt upon the Croſs; and the moſt glorious next to that, was, to ſee a poor Creature ſuffer in his Cauſe; and that he believed an Army of Martyrs would willingly come from Heaven to ſuffer in ſuch a Cauſe as he ſuffered for.* *Hacker* ſaid, *If he had a thouſand Lives, he would lay them all down for* the Cauſe. And Axtel *thanked the Lord, no Guilt lay upon his Conſcience.* But ſome of them, it is ſaid, had raiſed themſelves to this Pitch by Strong-Waters; and *Hugh Peters* was very drunk, when he was drawn to his Execution; which occaſioned *Cook*, who ſuffered with him, to ſay, *Here is a poor Brother, that I am afraid is not fit to die at this Time.* Only *Scroop* and *Jones* diſcovered any Remorſe, or behaved with tolerable Decency; but *Scroop*, it ſeems, prayed for the King; and the other acknowledged the Juſtice of their Sentence.

Cromwell, Bradſhaw, Ireton and Pride, buried under the Gallows.

The Bodies of ſome of the principal Regicides alſo, that died before the Reſtoration, *viz.* of *Cromwell*, *Bradſhaw*, *Ireton* and *Pride*, were taken out of their Graves, and dragged on Hurdles to *Tyburn*, where they were hanged up, from Ten in the Morning till Sun-ſet, and then buried under the Gallows.

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An Act alſo paſſed, to attaint 19 of the Regicides that fled from Juſtice; and to confiſcate the Eſtates of thoſe that died before the Reſtoration.

19 Regicides that fled, attainted.

The Eſtates alſo of the Lord *Mounſon*, Sir *Henry Mildmay*, and Mr. *Wallop*, who had been pardoned, as to Life; with the Eſtates of Sir *James Harrington* and *John Phelps*, not then apprehended, were alſo confiſcated; and the Lord *Mounſon*, Sir *James Harrington*, and Sir *Henry Mildmay*, were degraded from their Honours and Titles, and drawn upon Sledges, with Ropes about their Necks, from the Tower of *London*, to the Gallows at *Tyburn*, and from thence to the Tower again, on the 27th of *January*, 1661. And it was Enacted, they ſhould remain Priſoners for Life; but they had ſuch powerful Mediators at Court, that they were not long after releaſed out of Priſon, and great Part of their Eſtates reſtored them: And ſuch was the Gratitude and Ingenuity of *Mildmay*, for all this Grace, that he became one of the moſt implacable Enemies King *Charles* II. had; which his Majeſty took Notice of, when he came to preſent him with a ſeditious Addreſs afterwards.

Mounſon Mildmay, *and* Walop, *dragged to* Tyburn;

but pardoned in the End.

But before the laſt mentioned Act, for inflicting Pains and Penalties on theſe and the reſt of the Regicides, was made, thoſe who had been condemned and Reprieved, being brought to the Bar, and ordered to ſhew Cauſe why Judgment ſhould not be executed upon them; they anſwered, that they had ſurrendered themſelves, upon his Majeſty's Gracious Declaration from *Breda*, and the Proclamation afterwards publiſhed, by the Advice of both Houſes of Parliament, to render themſelves; being adviſed that they would thereby ſave their Lives; and humbly craved the Mercy of the two Houſes, and their Mediation to his Majeſty: To which, it is ſaid, that infamous Droll *Harry Marten* added, *That he had never obeyed any Proclamation before*; *And he hoped, he ſhould not be hanged for taking the King's Word now.*

The Bill for executing the reſt of the condemned Regicides dropped.

And they were ſo fortunate, that the Bill, that was brought in for their Execution, was dropped at the ſecond Reading, whereby their Lives were ſaved.

Corbet, Okey, *and* Berkſtead, *who had fled, executed.*

Three of the Regicides who had fled from Juſtice *(viz.) Miles Corbet*, Colonel *John Okey*, and Colonel *John Berkſtead*, were afterwards apprehended in *Holland*, at the Inſtance of Sir *George Downing*, (his Majeſty's Reſident to the States in the Year 1662.) and ſent over to *England*; and having been Out-lawed for High-Treaſon, a Rule was made by the Court of King's-Bench, for their Execution at *Tyburn*.

They die penitent.

Theſe were the laſt of the Regicides that were puniſhed Capitally; and it was obſerved they died very Penitent, exhorting the People to ſubmit to his Majeſty's Government.

Remarks on the Trials of the Regicides.

From the Conduct and Speeches of that amphibious Animal *Hugh Peters*, both *Prieſt* and *Soldier*, it is eaſy to obſerve what the REFORMATION was, they drove at in thoſe Days: It was a Maxim with him, it ſeems, *That it would never be well, till the Lords, the Levites, and the Lawyers were put down.* The Monarchy was already deſtroyed, and converted into a Common-Wealth; but he was afraid the Old Conſtitution would Revive, unleſs the Levites, the Clergy of the Epiſcopal Church, and Laws of the Land were deſtroyed and eradicated, and the Peers entirely extirpated: But to conſider a little more particularly, the Principles the King's Murderers went upon.

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The chief Part of the Regicides Defence, at their reſpective Trials, it appears, conſiſted in maintaining theſe five Propoſitions.

The Subſtance of their Defence conſiſts in five Articles.

1. That the Commons, under whom they acted, were, from the firſt Foundation of the Government, the Supreme Power of this Nation.

2. That it was their Duty to obey the Powers *de facto*, whether they were ſo *de jure* or not.

3. That their Cauſe was approved, and countenanced by Heaven, as appeared on many ſolemn Appeals to God, and a long Train of Succeſſes.

4. That ſeveral of their Judges were in Arms for the Parliament againſt the King, and were therefore as guilty of High-Treaſon as themſelves.

5. And laſtly, They were under a Force, and compelled to ſubmit to the Powers then in being: *All which I ſhall conſider in their Order.*

That the Commons were the Original of Power.

As to the Firſt, *That the Commons were Originally* (and conſequently ought always to be looked upon as) *The Supreme Power of the Nation.* This is a Maxim that our Presbyterians and other Republicans have always maintained, whenever they were uppermoſt, or durſt diſcloſe their Thoughts. They pretend to derive our Conſtitution from the *Saxons* or *Germans*, who were governed, they tell us, by their *Wittena-Gemots*, or great Councils choſen by the People; and that theſe Councils elected both their Civil and Military Officers, changing them as often as they ſaw fit: That when the *Saxons* ſettled in *Britain*, their Conſtitution remained the ſame; only they allowed the Chief Magiſtrate and General (uſually the ſame Perſon) to take the Name of King upon him, reſerving ſtill the Power to themſelves of depoſing him, calling him to Account, and ſitting in Judgment upon him: By Virtue of which Supreme Authority, the Regicides and their Diſciples juſtified the Trial of the King and the putting him to Death.

The firſt Article of the Regicides Defence anſwered.

In Anſwer to which, It does not appear that the *Wittena-Gemots*, or great Councils of the *Germans*, conſiſted of the Repreſentatives of the Commons: Nay, it is evident, they conſiſted of the hereditary Nobility, who held their Lands of their reſpective *Konings*, or Superior Lords, by Military Tenures, and were obliged to attend their Superiors, with a certain Number of Troops, in all their Wars: Neither does it appear, that they had a Power of electing or depoſing their Princes; but if they had, theſe Councils conſiſted of the Nobility, and not of the Repreſentatives of the Commons, as has been obſerved already. If therefore the Power of electing, depoſing, or judging their Princes or Chief Magiſtrates,

was

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was lodged any where, it was in the Nobility, *and not in the Commons*; and conſequently, when the Commons aſſumed that Power, it was evidently an unprecedented Uſurpation. But further, whatever the *German* Governments were, it is evident, this Nation never knew any ſuch Conſtitution as our Republicans feign the *Germans* and the *Saxons* once had: There never was an Inſtance of a King tried and condemned to Death by his Subjects in *England*, till the Year 1648, and it is ſtrange, if the People had ſuch a Right, it was never exerciſed or pretended to, till then. It is true, the Barons or Nobility did ſometimes reſiſt and depoſe their Kings, under pretence of Mal-adminſtration; but the Commons had nothing to do in theſe Conteſts: The Diſpute was, whether the Supreme Power, or laſt Reſort, was lodged in the Crown, or the Nobility: It was never thought to be in the Commons, during the Barons Wars; and all that ever the Barons pretended to, was, that when one King had forfeited his Right to govern them by Mal-adminſtration, the Crown devolved upon the next in Succeſſion; or they ſuggeſted that ſome other Prince of the Blood Royal had a prior Title: They never had the Aſſurance to ſay the Supreme Power devolved on themſelves, or reverted to them: This was reſerved for the Saints of the laſt Age to affirm of the 3d and laſt Eſtate that was conſtituted.

But to return to the Times of the *Saxons*, When they came over to *England*, we find the ſeveral Expeditions they made, were undertaken in the Name of their Princes, or Generals; with theſe the *Britiſh* Kings treated, and not with their *Wittena-Gemots*, or Parliaments, There is no mention made, either of their great Council's treating, or ratifying any Treaty made with the *Britons*; which is ſtrange, if the Prince was no more than their Officer.

Rapin, the great Advocate for a Republican Form of Government, indeed maintains, that *Hengiſt*, the firſt of the *Saxon* Chiefs, whom the *Britons* invited into *England*, was no Sovereign Prince, or had any Civil Authority in his own Country, but what he derived from the *Wittena-Gemot*, or *Parliament*: That he was only elected General in this Expedition, and might have been deprived of that Command, even by the Soldiers he brought with him; from which Premiſſes he proceeds to draw this Conſequence, *That ſince* Hengiſt *was not naturally King of the* Saxons, *he could only become ſo by the Election of thoſe under his Command.*

But admitting for once, what can never be proved, that there was no ſuch Thing as a Monarch, or Sovereign Prince, among the *Saxons*, and that they were governed by their *Wittena-Gemots*, or great Councils; will it follow from thence, that the Soldiers, led by *Hengiſt* in this Expedition to *England*, had a Power of electing, or depoſing their General? If the Soldiers, as well as *Hengiſt*, were ſubject to ſome *Saxon* State, that ſent them on this Expedition, how could they transfer their Allegiance and elect him their King.

And indeed, *Rapin* himſelf has given ſo plain and full an Account of *Hengiſt*'s Acceſſion to the Kingdom of *Kent*, that there is no room to ſuppoſe he was elected by the *Saxons*. He acknowledges that the Crown was conferred on him by *Vortigern*, King of *Britain*; and that thereby he became Sovereign of *Kent*, and veſted with the like Prerogatives as *Vortigern* had been, who made a Ceſſion of that Kingdom to him.

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But then *Rapin* objects, that this could not give *Hengiſt* Dominion of the *Saxons* he brought with him: THIS COULD NEVER BE BROUGHT ABOUT, BUT BY THEIR CHOICE OF HIM TO BE THEIR KING. And it is true, taking the Word *Choice* in its full Latitude, we may admit that the *Saxons* became *Hengiſt*'s Subjects (if they were not ſo before) by their own Choice; that is, as every Foreigner becomes a Subject of *England*, who chooſes to reſide in *England*, and ſubmit to the Government here: But it does not follow from thence, that *Hengiſt* was elected King by the *Saxons*, or that the King of *England* is elected to that Dignity by ſuch Foreigners as *chooſe* to reſide here.

Should it be admitted that *Hengiſt* was not a Sovereign Prince in *Germany*, and had no Civil Authority over thoſe he brought with him, into the Kingdom of *Kent*; yet, when *Vortigern* had reſigned that Kingdom to him, might not *Hengiſt* give his Followers the Choice of returning Home, or of remaining with him, without dividing his Authority amongſt them? In returning to *Germany*, probably, nothing but Rags and Poverty was to be expected: but upon their remaining in *Kent*, it is preſumed, even by *Rapin* himſelf, that *Hengiſt* promiſed, and actually parcelled out moſt of the Lands of that Kingdom amongſt them, to hold them of him by Military Tenures (the uſual Conduct of the *Saxons*, and other Northern Nations.) And what Occaſion had *Hengiſt* then to put it to the Vote, whether he ſhould be their King, or not? The Terms he offered to his Followers were advantageous enough, without parcelling out his Authority amongſt them.

Had the *Saxon* Soldiers oppoſed *Hengiſt*'s accepting the Crown of *Kent*, and aſſuming the like Authority that *Vortigern* had, would he not have ſaid of Courſe, *You are perfectly at Liberty to return Home; but ſince a great Prince has been pleaſed to confer a Kingdom on me, you muſt pardon me if I take the Liberty to accept it. I have no Favours to ask of you; but if you have any Expectations from me, it will be your Wiſdom to behave yourſelves as becomes my Subjects?* What could any Officer in *Hengiſt*'s Army Reply to this? Is it to be ſuppoſed that any one of them would have refuſed to become his Subject, upon his conferring ſome fine *Roman*, or *Britiſh*, *Vill* upon him, with an Extent of Land, ſufficient to maintain a great Man in Splendour; and ſuch a Command as uſually attended all Feudal Tenures. From the whole I conclude, that, ſince it is admitted that the *Britiſh* Kings were Supreme, and not ſubject to be called to an Account by their People; ſo neither were the *Saxon* Kings, who ſucceeded them in their Authority, and particularly *Hengiſt*, the firſt

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Saxon King, who received his Crown from *Vortigern*, King of *Britain*, and was not elected to that Dignity, either by the *Britons* or *Saxons*.

But let the Conſtitution have been, as our Republicans dream Originally; every one knows that by Cuſtom, Common or Statute-Law, the Conſtitution has been very much altered, ſince the *Saxons* arrived amongſt us; and that at the Time of the Grand Rebellion, the King, both by Common and Statute-Law, was Supreme in his Dominions, having no Equal, much leſs a Superior, either within his Dominions or without.

The Lord Chief Baron *Bridgman* obſerved, at the Trials of the Regicides, That no leſs than Ten Acts of Parliament ſtile the Crown of *England*, an Imperial Crown: That the Treaſon of the *Spencers*, in the Reign of *Richard* II. was their maintaining, *That Allegiance was due to the King, by Reaſon of his Crown; and that if the King did not demean himſelf as he ought, ſince he could not be reformed by Law, he might by ſharp Impriſonment* (the very Doctrine the Presbyterians taught and practiſed, after they had ſubdued their Sovereign King *Charles* I.) But this, he told them, had been adjudged Treaſon by two Acts of Parliament: That our Law-Books ſtiled the King, *The Lieutenant of God*; and that the Crown of *England* was not ſubject to any human Judicature: And if this was Law, at the Time of the Grand Rebellion, to what Purpoſe is it to bring the old *Saxons*, as Precedents for our depoſing and judging Kings? If we ſhould admit *they* had ſuch a Power, that *they* had ſuch Laws; it is evident we had no ſuch Laws in the Reign of King *Charles* I. And this the Rebels ſeemed conſcious of, by their Schemes for extirpating all Laws and Lawyers, as well as the Lords and the Levites. The Rebels had made loud Complaints, That their Religious and Civil Rights were invaded by the Crown; but they no ſooner got the Power into their Hands, than they entirely ſubverted both the Eccleſiaſtical and Civil Government: REFORMATION was pretended, but it was Empire they fought for, and uſurped a Power Ten Times more oppreſſive and arbitrary than that they complained of.

And admitting that the Parliament might contend with the Crown, in Defence of their Liberties, and Properties; yet their entering into a War with their Sovereign, after every Thing, they could demand for their Security, was granted; and the King had transferred, or ſurrendered to them, ſome of the moſt valuable Branches of his Prerogative, can never be defended. But laſtly, as the Court well obſerved, the Regicides could not ſhelter themſelves, even under the Parliament; ſince the Houſe of Peers, and much the greateſt Part of the Commons, were excluded, before they entered upon the laſt Tragick Scene; and conſequently, the Judgment given againſt the Regicides was extremely juſt and equitable.

That the Subject was obliged to obey the Powers in being.

2. The ſecond Part of the Regicides Defence was, that they thought themſelves obliged in Law and Conſcience to obey the Powers in being; and cited the 11 *Henry* VII. which indemnifies the Subject for ſerving a King *de facto*; and miſerable, they ſaid, muſt be the Condition of the People, if they were bound to obey thoſe that were in Poſſeſſion of the Sovereign Power, and yet might be puniſhed for obeying them. As the Statute of 11 *Henry* VII. had provided, That he who ſerved the King for the Time being, ſhould not be puniſhed, that Statute ought in Equity to be extended to them, who obeyed the Supreme Power then in being: If the Supreme Officer *de facto* might juſtify a War, and thoſe were indemnified, who took up Arms for him againſt the King *de jure*, the Supreme Power *de facto* might juſtify the erecting a Court for the Trial of the King and his Adherents, who had conſpired the Deſtruction of the State, which was then ſettled and eſtabliſhed: If the King's Perſon was ſacred, and ought not to be reſiſted or aſſaulted, upon any Account, the attacking him with Sword and Piſtol, and endeavouring to murder him in the Field, could never be juſtified: But if it was lawful to make War upon the King, in order to compel him to yield to their Demands by Force of Arms; and to take away the Lives of the King, and his Loyal Subjects, in a Military way, for encroaching on the Liberties of the People; it was lawful alſo to call him to an Account in a Civil Way, and to judge and condemn both him and them, for making a Breach in the Conſtitution: Beſides, the King was not then in the Execution of his Office, but a Priſoner of War, and ſubject to the Power the Regicides acted under.

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To this it was anſwered, That the Regicides groſly miſtook the Meaning of the Statute of 11 *Hen.* VII. for that Act was made for the Security of a King *de facto*, and his Adherents; much more for the Preſervation of a King *de jure*, and his faithful Subjects; it was not made in Favour of an antimonarchical Government: Beſides, the Regicides had owned the Perſon they proceeded againſt to be their King, and *ſentenced him to Death as their King*, without pretending there was any other King, either *de facto* or *de jure*; and therefore there was no Colour for them to claim the Benefit, either of the Letter, or the Equity of that Act, made for the Support of Kingly Government.

That the People would be more miſerable, if every ſucceſsful Rebel might claim a Right to their Allegiance, than they could be by being under an Obligation to obey their lawful Princes; for no ambitious Man would be afraid to conſpire the Death of his Prince, or the Subverſion of any Government he happened to live under.

If that Notion prevailed, that *Poſſeſſion* alone would give him a Right to the Dominion of his fellow Subjects, then Changes of Government would probably become as frequent as the Revolutions of the Moon; for by the ſame Rule that Poſſeſſion gives one Uſurper a Right, it will give an hundred a Right to our Allegiance: There could never be ſuch a Thing as a ſettled Government; but the People muſt be for ever harraſſed by ſucceſſive Uſurpations, as we find they were

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were during the Grand Rebellion: One Set of Men had ſcarce poſſeſſed themſelves of Sovereign Power, but they were diſpoſſeſſed by another; till the People, wearied out with perpetual Revolutions, almoſt unanimouſly agreed to reſtore their antient Form of Government.

Laſtly, It was obſerved, that none of our Princes (whether Kings *de facto* or *de jure*) from the firſt Foundation of the Government, to that Time, ever pretended that *bare Poſſeſſion* gave them a Right to Reign; but always ſet up ſome other Claim or Title; conſequently *Poſſeſſion* alone could not give any one, or any Number of Men, a Right to Sovereign Power, or to the Allegiance of the Subject. Theſe Saints were the firſt in this Nation that pretended *Dominion was founded in Grace*; or, that *Poſſeſſion* extinguiſhed all other Rights: That a ſucceſsful Rebel had nothing to do but to kill and take Poſſeſſion; and that this alone was ſufficient to conſtitute him a rightful and lawful Governor. The Judgment of High-Treaſon therefore, which was pronounced againſt thoſe Men who maintained and practiſed ſuch pernicious Doctrines, muſt be acknowledged to be agreeable to the Laws of God and Man.

Succeſs an Argument of the Juſtneſs of their Cauſe.

3. The next Part of the Regicides Defence was, That their Actions were approved by Heaven, as was manifeſt, they ſaid, from that continued Train of Succeſs with which they were bleſſed for many Years.

Harriſon, one of the moſt forward and active amongſt the Regicides, ſays at his Trial, ſome had felt the Terrors of that Preſence of God that was with his Servants (the Regicides) in thoſe Days, however it had ſeemed good to God to ſuffer this Turn (the Reſtoration) to come upon them: That he had earneſtly deſired of God, the Searcher of Hearts, If he had done amiſs, that he might receive of him ſome Convictions upon his Conſcience; but to that Moment he had rather received Aſſurance of the Juſtice of what he had done; and he believed, e'er long, it would be made known from Heaven, There was more of God in it than Men were aware of.

Carew, at his Trial, affirmed, *That what he had done, was in the Fear of the Lord, and in Obedience to his holy and righteous Laws: That the Matter in Queſtion had been controverted in the Face of the whole World; and the Lord had given an Anſwer, upon ſolemn Appeals, to theſe Things.*

Scot deſired it might be engraven on his Tomb-Stone, *That he adjudged the King to Death, and that he did not repent of it*; and at his Execution, ſaid, *It was the moſt Glorious Cauſe in the World.* And further, *Peters* reſembled their Mock Court of Juſtice to the Trials that ſhould be, at the End of the World, by the Saints.

From whence it appears, that they thought they were doing God good Service, when they murdered their King, plundered his Loyal Subjects, and reduced their Country to the utmoſt Miſery and Confuſion; and in this they tell us, they were abundantly confirmed by the Succeſs of their Rebellious Arms. To which it was anſwered, that the Regicides might pretend Conſcience for what they had done; but they would do well to remember our Saviour's Prediction, *That the Time will come when they will perſecute you, and kill you, and think they do God good Service.* That there was ſuch a thing as Spiritual Pride: Men might be over-run with an Opinion of their own Holineſs, and act by pretended Revelations: They might ſay that they had prayed for the Direction of Heaven, when they were about to perpetrate the groſſeſt Villainies, and that they found no Remorſe for committing them, as the Man did who murdered his Father and Mother, and averred he could not underſtand there was any Sin in it: That nothing could be more deſtructive to Society, to the Peace and Happineſs of the World, than ſuch pernicious Principles. People that were prompted by an erroneus Conſcience, to commit all manner of Outrages, were more to be dreaded than thoſe whom Neceſſity, Ambition, or Avarice, ſometimes puſhed upon unwarrantable Actions; for the one retained a conſtant permanent Principle of doing Miſchief for God's Sake, while the others were Miſchievious but by Accident. Men who looked upon Murder and Rebellion as the Way to Paradiſe, and believed their Holineſs entitled them to this World and the next, would undoubtedly prove more troubleſome and dangerous to Government in General, than any other Set of Men that had not the like Expectations of Happineſs in both Worlds, as a Reward of their ſeditious and treaſonable Attempts.

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An Anſwer to the third Article of the Regicides Defence.

The chief Reaſon, no doubt, of the Rebels inſiſting ſo much on this Argument of Succeſs, was, that they found none of the reſt would bear them out: They obſerved that all the Laws of their Country were Point-blank againſt them; and therefore reſorted to God's over-ruling Providence to juſtifie their Conduct. A Battle between the Rebels and their Sovereign was, in thoſe Days, called, *An Appeal to God:* And though they might before have ſome Doubts and Scruples upon their Minds, concerning the Lawfulneſs of dethroning their Prince, and aſſuming that arbitrary Dominion they exerciſed; a Victory or two made them perfectly eaſy, and imagine they were fighting the Lord's Battles: And indeed we have Inſtances of Pirates and *Banditti*, that have entertained the ſame Notions, whoſe repeated Succeſſes againſt the honeſt and induſtrious Part of the World, have induced them to think themſelves the Favourites of Heaven. Thoſe of *Algiers* pretend to as much Religion as the Heroes of Forty-eight: They declare they engage in the Cauſe of God and their prophet, when they rob and murder their peaceable Neighbours of a different Faith: And thus it was among our Saints; they firſt reprobated all Mankind but themſelves, and then pretended that none but themſelves had a Right to enjoy any thing in this World, or the next: They had an Authority from Heaven, they would have us believe, to deſtroy all Mankind that would not ſubſcribe to their Creed; and ſo rooted and confirmed were they in theſe Opinions, that though they ſaw their great Argument of *Succeſs* turned upon

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upon them; and that after numberleſs Victories obtained againſt their native Kings, Monarchy and the Royal Family was peaceably reſtored, and all their hopeful Schemes defeated without the leaſt Bloodſhed; yet ſuch were their Prejudices, ſuch their Infatuation, they had been ſo long uſed to look upon their deteſted Cauſe, as *the Cauſe of God*, that their own Argument of Succeſs had no Weight with them, when they ſaw it on the Side of the King and his Loyal Subjects; inſomuch, that when they came to die, and receive the due Reward of their Parricide, they went out of the World glorying in their Rebellion and Uſurpation; and inſiſting to the laſt that *Their Cauſe was approved by Heaven*; which made their Execution neceſſary, that others might be deterred from the like Attempts.

The fourth Part of their Defence, that they were as Innocent as the Parliament that began the War.

4. Another Part of the Regicides Defence was, that they were as Innocent as ſome of their Judges, who were Members of the Long Parliament, that began the War againſt the King.

Harriſon at his Trial, told the Court, that their Lordſhips knew how active many of thoſe had been in the late Rebellion, who now ſat upon the Bench as his Judges, and had juſtified their Reſiſtance, and taking up Arms againſt his late Majeſty.

Axtel alſo averred at his Trial, that General *Monk*, and the reſt of the Officers of the Uſurper's Army, were as guilty as he; and ſo were all the People, that had acted by the ſame Authority, in the Three Kingdoms. That the Lords and Commons had aſſerted their Right to the Militia, and that it was agreeable to Reaſon and Conſcience, that the Common People ſhould be directed in their Judgments by the High Court of Parliament: That if he was guilty of Treaſon, the Parliament began the Treaſon; with a great deal more to the ſame Purpoſe.

An Anſwer to the 4th Part of the Regicides Defence.

To this the Court anſwered, That it did not become the Priſoners at the Bar, to make Reflections on their Judges: That they ſhould not ſuffer them to throw in Bones of Contention, and revive old Quarrels: They did not call them to an Account for what they had done by Authority of Parliament; but for their Actions ſince they had turned the Parliament out of Doors; and for the Malice they expreſſed, to the very laſt, againſt the King and Government.

And though it be true, that the two Houſes had involved themſelves in the Guilt of Rebellion, and that many of theſe Officers and Judges, who acted under them, were once guilty of High-Treaſon; yet, as they had ſhewn themſelves ſenſible of their Error, and in a manner expiated their Offence, by contributing in a very great Degree to the Reſtoration of the King, and the antient Conſtitution, it was highly reaſonable they ſhould be Indemnified for what they had formerly done; but there was not the ſame Reaſon that thoſe who ſtill perſevered obſtinately in their Rebellion, ſhould enjoy the like Indulgence. The Court juſtly obſerved, that *Pardons were for the Penitent, and not for ſuch Criminals as juſtified their Treaſons, and declared they were ready to act the ſame Tragedy over again the firſt Opportunity that offered.*

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The fifth Article of their Defence that they were under a Force.

5. The laſt Part of the Regicides Defence, I ſhall mention, is, that they were under a Force: The Power of the Uſurpers was irreſiſtable, and therefore it was hard they ſhould be puniſhed for ſubmitting to it.

The fifth Article conſidered.

This was generally allowed to be a reaſonable Plea, where it was ſtrictly true. No Government would puniſh their Subjects, for ſubmitting to an Uſurpation, where they were in no Condition to reſiſt it: Neither the Common or Statute-Law looks upon thoſe Men to be guilty of Treaſon, who with *Reluctance* ſerve and obey a Rebel, or furniſh him with Proviſions for fear of Death; even thoſe who ſerve a Pyrate, and aſſiſt in the taking honeſt Merchant-Men *unwillingly*, are never puniſhed as Pyrates.

But the caſe is widely different, where it appears that ſuch Men made it their Choice to ſerve a Rebel or a Pyrate, and partook of the Spoils they made; much more, when they accepted Offices and Commands under them, and aſſiſted voluntarily in ſupporting an unlawful Power. It is ridiculous for any Man to pretend he was forced to be a Judge, or a General. Uſurpers do not uſe to employ thoſe in Places of Truſt, that they take to be Enemies to their Deſigns: Therefore thoſe who had poſſeſſed any Poſts, Civil or Military, during the Uſurpation, had nothing to plead in their Defence, but their Repentance for the Miſchief they had done; and the Share they had in reſtoring that Conſtitution they once contributed to deſtroy.

Proceedings againſt ARCHIBALD Marquis of ARGYLE, for High-Treaſon, in the Parliament of *Scotland*, in the Months of *January*, *February*, and *March*, 1660-1. 13 and 14 *Car.* II.

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Argyle's Trial.

Two Charges againſt him and his Adherents.

THERE were two Charges, or Setts of Articles, preferred by the Lord Advocate, Sir *John Fletcher*, againſt the Marquis and his Adherents, in this Parliament; the one dated the 23d of *January*, and the other the 31ſt of the ſame Month. In the firſt, they are charged with the Murders and Outrages, committed againſt the Family of the *Lamounts* and *Mac Donalds*, who acted under the late King's Commiſſion; and in the other thoſe Facts are omitted.

The Subſtance of the firſt Charge.

The firſt Articles were exhibited in the Name of the ſaid Lord Advocate for the King: And of Sir *James Lamount*, or *Lamond*, of *Inneryne*, for himſelf, and in behalf of the *Mac-Donalds*, and the reſt of his Kindred, Friends, Vaſſals, Tenants and Servants; and charge the ſaid Marquis, *George Campbell* his Juſtice and

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That they conſtantly oppoſed K. Charles I.

raiſed Forces againſt him,

and invaded England;

joined the Engliſh Rebels;

delivered up the King to them;

oppoſed the King's Reſcue;

raiſed an Army againſt him;

invited the Uſurper to invade Scotland.

Honours and Offices conferred on the Marquis.

His Oaths to ſerve the King;

and yet deſerts him.

Acknowledges the Uſurpers.

Sits in their Parliament as a Commoner.

Voted the Expulſion of the King, and Royal Family.

and Sheriff-Deputy, *James Campbell*, and ſeveral more of the Officers, Servants, and Dependants of the ſaid Marquis, with High-Treaſon; in that they, from the Beginning of the Troubles in the Year 1639, 1640, 1641, and 1642, both ſecretly and avowedly appeared in conſtant Oppoſition to their late Sovereign King *Charles* I. That in the Year 1643, they convocated and met in a treaſonable and unlawful Aſſembly, and ordered and appointed treaſonable Levies of his Majeſty's Subjects, in Oppoſition to his Majeſty's Perſon, Authority, and expreſs Command; and afterwards actually invaded and entered his Majeſty's Kingdom of *England*, taking his Towns, killing his Subjects, and deſtroying their Eſtates, joining with the *Engliſh* Rebels and Sectaries, for the Deſtruction of his Majeſty's Perſon, Family, Authority and Government.

That the ſaid Marquis of *Argyle* and his Accomplices, in the Year 1646, in an unheard of way of Treachery and Treaſon, delivered his Majeſty's ſacred Perſon into the Hands of the ſaid Rebels, who treacherouſly murdered him. And when the States of the Nation propoſed the raiſing an Army for delivering his Majeſty from his Captivity, the ſaid Marquis and his Accomplices oppoſed the ſame, and after the Act paſſed, declared their Diſſent: They alſo raiſed Forces without any Authority, in the Year 1648, and fell upon his Majeſty's Troops, killing his good Subjects, and waſting and deſtroying their Lands; and moſt baſely and treacherouſly invited the late Tyrant and Uſurper *Oliver Cromwell*, to enter *Scotland*, with an Army of Strangers, Traitors, and Sectaries; ſuſtained him and his treaſonable Army, with all ſorts of Proviſions, feaſting and countenancing the Uſurper and his Officers, in the Metropolitan City of the Kingdom, and in his Majeſty's principal Fortreſs, the Caſtle of *Edinburgh*, which, by the Laws of all Nations, was High-Treaſon, and, in all probability, was the Ruin of that Kingdom; this Act immediately preceding the cruel Regicide and Murder of their ſacred Sovereign King *Charles* I.

That notwithſtanding the many Honours and Offices conferred on the Marquis, by the late King; and that his then Majeſty, King *Charles* II. had permitted the Marquis to aſſiſt at his Coronation; when the Marquis ſwore *by the Eternal God, that he would ſupport his Majeſty to the utmoſt, and be a true and faithful Subject to his Crown, and live and die in his Service, againſt all Manner of Folk whatſoever:* The ſaid Marquis had, notwithſtanding, diſloyally and baſely deſerted his Majeſty's Perſon and Army at *Sterling*, when they were on their March to *England*, in the Year 1651; and in the Year 1652, acknowledged the Uſurper's Government in a Commonwealth, without a King or Houſe of Lords, and obliged himſelf to be obedient to it: That he cauſed himſelf to be elected a Member of the Commons, in the Uſurper *Cromwell*'s Parliament; and ſat, and voted for the ſaid Tyrant in his uſurped Authority, and excluding his Majeſty, and his Royal Family, from their Right to the Crowns of theſe Kingdoms. And in the Years 1653, or 1654, ſold and delivered to the Rebels ſeventeen Pieces of Cannon, and ſeven Hundred ſmall Arms: That in the Years 1654, or 1655, they aſſiſted the Rebels with Boats, that were going to attack the Earls of *Glencairn* and *Middleton*, and his Majeſty's Loyal Subjects, that were aſſembled in the North, to vindicate his Royal Authority and revenge the late King's Death; and afterwards joined the ſaid Rebels, in order to ſuppreſs the ſaid Earls and their Adherents; countenancing, counſelling, and conveying the Rebels through divers Places in the Highlands, in their Expedition againſt the King's Forces: That on the Death of the Uſurper, *Oliver Cromwell*, they aſſiſted at the Market-Croſs of *Edinburgh*, in proclaiming the Uſurper *Richard*, his Son; and the ſaid Marquis, procuring himſelf to be elected a Member of the Commons, voted the Excluſion of his Majeſty, and his Royal Family.

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Aſſiſted the Rebels in the North.

Proclaims Richard.

And further to manifeſt the ill Intentions of the Marquis againſt his Majeſty, contrary to his Oaths and Duty, when ſome Miniſters were praying for his Majeſty's Happineſs, in the Years 1652, or 1653, he openly declared, *They were Fools to pray for that wicked, falſe, malignant King, whom God had caſt off, and would never reſtore again*; and boaſted, *That he was the only Man that plotted the riſing of the Forces in the Weſt*; which was the Occaſion of his Majeſty's ill Succeſs.

Speeches againſt the Reſtoration.

That he received Twelve Thouſand Pounds from the Uſurper, *Oliver Cromwell*, for the Service he had done him. That he correſponded, by Letters, with the Uſurper *Richard*, in the Years 1658, and 1659, and with Sir *Archibald Johnſtoun*, of *Wariſtoun*, his Fellow-Traitor, and ſat in that traiterous Meeting, or Council of the Rebels at *London*, called, *the Committee of Safety*, of which *Wariſtoun* was Preſident; and did again iſſue Declarations for excluding his Majeſty, and Family, from their Right to the Crown.

Receives 12000 l. of the Uſurper.

Sat in the Committee of Safety.

The reſt of the Charge conſiſts in an Enumeration of the Murders, and Outrages, committed by the Marquis, and his Adherents, on the Family of Sir *James Lamount*, and the *Mac Donalds*, ſome of whom they hanged up in cold Blood, contrary to their Capitulation; others they impriſoned, and laid in Irons, burning their Houſes, cutting down their Trees, and ſeizing their Lands and Goods, which they remained in Poſſeſſion of at the Time of this Proſecution.

Outrages againſt the Lamounts and Mac Donalds.

The ſecond Indictment, or Accuſation, charges the Marquis with gathering together, in a hoſtile Manner, his Friends, Servants, Vaſſals, and Followers, without any Authority; and that, under Pretence of oppoſing ſuch as he nick-named *Anti-covenanters*, and Oppoſers of the Reformation (but indeed his Majeſty's faithful Subjects) did march to *Lyon*, in *Athol*, in the Year 1640, and in his Tent there did publickly declare, in the Preſence of a great many Gentlemen, *That it was the Opinion of many Divines and Lawyers, That a King may be depoſed for Deſertions, Venditions and Invaſions*; meaning thereby, that the King's Majeſty might be deſtroyed;

2d Charge, that he attacked the King's Forces.

Other Speeches.

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ed; and venting these Treasonable Speeches, with a Design to usher in his many Treasonble Actions, and Practices, done to his sacred Person, Dignity, and Authority; which doubtless did occasion, and was mainly Instrumental, both in his Deposition and cruel Murder: Which wicked and treasonable Speeches being reported by Mr. *John Stuart*, the said Marquis had caused him to be put to Death, as a Leasing-maker, though he was conscious of the Truth of that Report.

Takes the Earl of Airlie's *House.*

That he raised Forces, marched against the Earl of *Airlie*'s House, then held for his Majesty; and having obliged the Garrison to surrender, destroyed the said Earl's Tenants and Friends; and afterwards burnt and demolished that, and another House of the Earl's with the Furniture, to express his Hatred to the said Earl for his Loyalty.

Dunbarton *Castle,*

That in the Year 1640, he attacked his Majesty's Castle of *Dunbarton*, held by Col. *Henderson*, and forced it to surrender, carrying away the Cannon and Ammunition.

and burns the Countess of Sterling's *House.*

That, to shew his implacable Malice against all who had shewn any Affection to his Majesty, he did, in the Year 1645, burn the House of the Countess of *Sterling*, to whom he had great Obligations, with all the Furniture. Several Instances follow of his attacking his Majesty's loyal Subjects; and hanging them in cold Blood, after they had surrendered on Capitulations.

Other Murders and Outrages.

Part of the former Charge repeated.

He is also charged again as the Occasion of his late Majesty's being delivered up to the *English* Rebels, and opposing the raising an Army to rescue him out of their Hands: With levying an Army to oppose the Royalists, and calling in *Cromwell* to his Assistance.

That he did traiterously contrive and vote the drawing up of a Letter, directed to *Cromwell* the Usurper, wherein he and his Accomplices did promise, in the Name of the Kingdom of *Scotland*, to employ his utmost Endeavours, that none who had been active against the Sectaries, or been in Arms for the King at *Sterling*, or elsewhere, should be employed in any Place of Trust, without the Consent of *England*, as appeared by the said Letter, dated the 6th of *October*, 1648. That he also sent Sir *John Chiesly* to the pretended Parliament in *England*, desiring that the Noblemen and Gentlemen, that were taken Prisoners with Duke *Hamilton*, might be kept as Pledges for the Peace of the Kingdom, endeavouring thereby to enslave his Country and fellow-Subjects and bring them under the Power of Strangers. And having afterwards, on the 4th of May, traiterously taken upon him the supreme Authority of the Kingdom, he issued a Proclamation, declaring the Wives, Children and Families of *Lewis*, Marquis of *Huntly*; *James*, Lord *Ogilby*, and several other loyal Lords, out of the Protection of the Laws, and for transporting them out of the Kingdom.

Confederates with Cromwell *against the Loyalists.*

against the Hamiltons *and his own Country.*

Out-laws and banishes the same noble Loyalists.

That there being an Overture made for recognizing and proclaiming his Majesty King *Charles* II. which the Marquis durst not oppose directly; yet he caused it to be clogged with such Limitations and Restrictions as were destructive to his Dignity and Authority, and inconsistent with Monarchical Government, as appeared by the Commissions, Instructions, and Addresses sent to his Majesty: And to deter his Majesty from coming over, caused that brave and loyal Lord, the Marquis of *Montrose*, who acted by his Majesty's Commission, to be cruelly murdered at that very Time, with all the Circumstances of Disgrace and Dishonour.

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Puts hard Conditions on King Charles II. *murders* Montrose.

That his Majesty, however, coming over to *Scotland*, and the Usurper *Cromwell* invading that Kingdom, the Marquis held a Correspondence with him; and to advance the Designs of that Regicide, procured his Majesty to be removed from the Army; and by his Influence on the Commissioners of the General Assembly, met at St. *Cuthbert*'s Church, usually called *The West Church*, he procured a clandestine and surreptitious Act from them; wherein, besides many slanderous and reproachful Expressions of his Majesty and his Ancestors, It was declared, that they disclaimed, and would not own his Majesty's Interest, because he refused to subscribe a Declaration drawn up by the Marquis, containing many Scandalous, seditious, imperious, reproachful, and treasonable Expressions, not only against his Majesty's Authority and Government, but against his Father and Mother, and others his Royal Ancestors; and that his Majesty was forced to sign the same, though the worthiest and greatest Part of the Kingdom did then detest and abhor the ill Usage of his Majesty in that Particular, when that Act of Tyranny was exercised by the Marquis, and a few ill Men of his Accomplices.

Compels the King to sign a Seditious and Scandalous Paper.

And to manifest to the World, that it was always his Intention to destroy his Majesty's Authority and Government, and oppose his Restoration, (besides the traiterous Expressions already mentioned) he boasted before several Noblemen and Gentlemen, *That he would own any thing he had done; and if it were to do, would do it again, although he had known what would have been the Event of it*; presumptuously taking upon him, by outward Success to give Judgment upon the sudden and secret Councils and Determinations of God, thereby to alienate the Affections, Duties and Allegiance of his Majesty's good Subjects, and harden and confirm others in their Treason and Rebellion against his Majesty.

Boasts of what he had done.

Makes Success an Argument of the Justice of the Rebels Cause.

And lastly, in a Conference betwixt the Marquis, *Oliver Cromwell*, and Colonel *Ireton*, The Marquis observed, that then the Danger was great, and they were all ruined if any of his Majesty's Designs should take Effect; and thereupon gave his positive Advice, that they should proceed to the questioning of the King for his Life; declaring. *They should never be Safe, till they had taken away his Majesty's Life.* At least he knew of the said Treasonable Design, and did not reveal it, as appeared by a Speech he made in that pretended Parliament, *Anno* 1649. Wherein he declared, the Usurper *Oliver* told him, *That* England *and* Scotland *could never be at Peace, untill the King were put to death.*

Advises the proceeding Capitally against the King.

Bishop *Burnet*, has given us a pretty just Abstract of the Prisoner's Defence, in his Posthumous History: He says the Marquis chiefly

The Substance of his Defence.

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chiefly inſiſted, that during the late Wars, he was but one among a great many more: He had always acted by Authority of Parliament, and according to the Inſtructions that were given him, as often as he was ſent on any Expedition or Negociation. As to all Things done before the Year 1641, the late King had buried them in an Act of Oblivion, as his preſent Majeſty *Charles* II. had all thoſe done before the Year 1651. So that he had no Occaſion to make any Defence as to what had been done before that Time: That he was in *London* when moſt of the barbarities he was charged with were committed; nor did it appear he gave any Orders for them. It was well known that great Outrages had been committed by the *Mac Donalds*; and he believed his People, when they had the better of them, had taken cruel Revenges: This was to be imputed to the Heat of the Times and the Tempers of the People, who had been much provoked by the burning of the whole Country, and by much Blood that was ſhed. And as to many Stories laid to the Charge of his Men, he knew ſome of them were mere Forgeries, and others aggravated much beyond the Truth. But, what Truth ſoever there might be in them, he could only be anſwerable for what was done by himſelf or by his Orders. As to his Compliance with the Uſurpation, he had ſtood out till the Nation was quite conquered; and in that Caſe, it was the received Opinion of Divines and Lawyers, that Men might lawfully ſubmit to an Uſurpation, when forced to it by inevitable Neceſſity. It was the Epidemical Sin of the Nation. *His Circumſtances were ſuch, that more than a bare Compliance was required of him.* What he did that way, was only to preſerve himſelf and Family, and was not done with a Deſign to oppoſe the King's Intereſt: Nor did his Majeſty's Service ſuffer, by any Thing he had done.

Inſiſts on the Acts of Oblivion.

That he gave no Orders for the Barbarities he is charged with.

They did but retaliate the Injuries done them.

Some of the Facts falſe.

He was under a Neceſſity of complying with the Uſurpers.

Had no Deſign againſt the King.

During the Trial, the Lord *Lorn*, Son to the Marquis, obtained a Letter from his Majeſty to the Earl of *Middleton*, requiring him to order his Majeſty's Advocate, not to inſiſt on any Facts before the Indemnity paſſed in the Year 1651. And accordingly all the Part of the Charge, relating to what was done before that, was waved, and declared to be out of the Caſe: And the ſole Queſtion almoſt, that was debated in Parliament, was, *Whether the Marquis's Compliance with the Uſurpation after the Year* 1651, *was forced; or wilful and malicious?* Which it was impoſſible his Judges, who were moſt of them upon the Spot, and engaged, on one Side or the other, in the very Facts in Diſpute, could be ignorant of: Though the Biſhop affirms it was doubtful, till General *Monk* ſent down the Letters, wrote by *Argyle* to himſelf, *which put the Matter beyond Diſpute.* Whereupon his Friends withdrew, and the Marquis was found *Guilty of High-Treaſon*, without one diſſenting Voice; and Sentence paſſed upon him as a Traitor: However the Parliament was ſo Indulgent to the Priſoner, as to give him all the Time he could ask, to apply to his Majeſty, and ſet ſuch Facts right as might have been miſrepreſented; and it was the 27th of *May* 1661, before he was brought to the Scaffold: When he made the following Speech to the People, which I chooſe to recite *verbatim*, in as much as it contains Proteſtations of his Innocence, which were the principal Part of his Defence, and in a great Meaſure diſcovers the Principles this Nobleman went upon, in oppoſing both King *Charles* I. and King *Charles* II.

Acquitted of all the Charge before the Act of Indemnity.

The ſole Point in Debate Carried, that his Compliance was wilful and malicious,

on the Evidence of his own Letters Convicted of High-Treaſon, by the whole Parliament.

Time given him to apply for Mercy.

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His Speech on the Scaffold.

"Many will expect that I ſpeak many "Things, and according to their ſeveral O- "pinions and Diſpoſitions, ſo will their Ex- "pectations be from me, and Conſtructions "of me: But I reſolve to diſappoint many, "for I come not hither to juſtify myſelf, but "the Lord, who is Holy in all his Ways, "and Righteous in all his Works, holy and "bleſſed in his Name; neither come I to "condemn others. I know many will ex- "pect that I ſpeak againſt the hardneſs of "the Sentence pronounced againſt me; but "I will ſay nothing to it. I bleſs the Lord, "I pardon all Men, as I deſire to be pardon- "ed of the Lord myſelf: Let the Will of "the Lord be done; That is all that I deſire.

"I hope ye will have more Charity to me "now, than ye would have had at another "Time, ſeeing I ſpeak before the Lord, to "whom I muſt give an Account very ſhortly. "I know very well my Words have had but "very little Weight with many: And that "many have miſtaken my Words and Actings "both: Many have thought me to be an "Enemy to theſe great Works that have of "late been brought to paſs. But do not mis- "take me, good People: I ſpeak it in the "Preſence of the Lord, I *entered not upon "the Work of Reformation, with any Deſign "of Advantage to myſelf, or Prejudice to the "King and his Government.* As my latter "Will which was Written 1655, and there- "after delivered to a Friend (in whoſe Hands "it ſtill remaineth) can ſhow. As for theſe "Calumnies that have gone abroad of me, "I bleſs God, I know them to be no more: "And as I go to make a Reckoning to my "God, I am as free to any of theſe, concern- "ing the King's Perſon and Government. "*I was Real and Cordial in my Deſires to "bring the King Home, and in my Endea- "vours for him when he was at Home, and "I had no Correſpondence with the Adverſa- "ries Army, or any of them, at the Time "when his Majeſty was in* Scotland: *Nor "had I any Acceſſion to his late Majeſty's hor- "rid and execrable Murder, by Counſel or "Knowledge of it, or any other manner of "way.* This is a Truth, as I ſhall Anſwer "to my Judge. *And all the Time his Majeſty "was in* Scotland, *I was ſtill endeavouring his "Advantage, my Conſcience bear eth me Witneſs "in it.* So much to that Particular; and I hope "Gentlemen you will all remember theſe.

"I confeſs, many look on my Condition, "as a ſuffering Condition; but I bleſs the "Lord, that he that hath gone before me "hath trod the Wine-preſs of the Father's "Wrath, by whoſe Sufferings I hope that "my Sufferings: ſhall not be eternal. I bleſs "him that hath taken away the Sting of my "Sufferings: I may ſay, *That my Charter "was ſealed to-Day; for the Lord hath ſaid*

"*to*

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" *to me, Son, be of good Cheer, thy Sins are freely* " *forgiven thee*; and ſo I hope my Sufferings " ſhall be very eaſy. And ye know the " Scripture ſaith, The Captain of our Salva- " tion was made perfect by Sufferings.

" I ſhall not ſpeak much to theſe Things, " for which I am condemned, leſt I ſeem to " condemn others: *It is well known, it is on-* " *ly for Compliance, which was the Epidemi-* " *cal Fault of the Nation.* I wiſh the Lord " to pardon them: I ſay no more.

" There was an Expreſſion in thoſe Papers, " preſented by me to the Parliament, of the " *Contagion of theſe Times*, which may by " ſome be miſconſtrued, *as if I intended to lay* " *an Imputation on the Work of Reformation*; " *but I declare that I intended no ſuch Thing*; " but only related to the Corruptions and " Failings of Men, occaſioned by the pre- " vailing of the uſurping Powers.

" Now, Gentlemen, concerning the Na- " tion: I think there are three ſorts of Peo- " ple that take up much of the World, and of " this Nation. There is, 1. The openly " Prophane: And truly I may ſay, though I " have been a Priſoner, I have not had my " Ears ſhut: I hear aſſuredly that Drinking, " Swearing, Whoring, were never more " common, never more countenanced, than " now they are. Truly, if Magiſtrates were " here, I would ſay to them, if they lay forth " their Power for glorifying God, by reſtrain- " ing this, they ſhould fare the better: If " they continue in not reſtraining, they " ſhould fare the worſe. I ſay no more, but " either let People ſhun Prophanity, and " Magiſtrates reſtrain it, or aſſuredly the " Wrath of God ſhall follow on it. 2. Others " are not openly prophane (every one will not " allow that) but yet they are *Gallio*'s in the " Matter: If Matters go well, as to their pri- " vate Intereſt, they care not whether the " Church of God ſink or ſwim. But what- " ever they think, God hath laid Engage- " ments upon *Scotland: We are tied by Co-* " *venants to Religion, and Reformation: Theſe* " *that were then unborn, are yet engaged*; " *and in our Baptiſm we are engaged to it.* " *And it paſſeth the Power of all the Magi-* " *ſtrates under Heaven to abſolve them from* " *the Oath of God.* They deceive them- " ſelves, and it may be would deceive others " that think otherwiſe: But I would caveat " this: People would be ready to think this a " kind of Inſtigation to Rebellion in me; " but they are far wrong that think Religion " and Loyalty are not well conſiſtent: Who- " ever they be that ſeparate them, Religion " is not to be blamed, but they. *It is true,* " *it is the Duty of every Chriſtian to be Loyal*; " *yet I think the Orders of Things are to be ob-* " *ſerved, as well as their natures*; *the Order of* " *Religion, as well as the Nature of it. Reli-* " *gion muſt not be the Cock-boat*; *it muſt be the* " *Ship. God muſt have what is his, as well* " *as* Cæſar *what is his:* And thoſe are the beſt " Subjects that are the beſt Chriſtians. And " *that I am looked as a Friend to Reformation,* " *is my glory.*

" 3. There is another ſort that are truly " Godly; and to them I muſt ſay what I " fear, and every one hath Reaſon to fear; " (it is good to fear Evil). It is true, the " Lord may prevent it; but if he do not (and " truly I cannot ſee any probability of it) " *Times are like to be either very Sinning, or* " *very Suffering Times:* And let Chriſtians " make their Choice: There is a ſad *Dilem-* " *ma* in the Buſineſs *Sin or Suffer*; and ſurely " he that would chooſe the better Part, would " chooſe to ſuffer: Others that will chooſe to " ſin, ſhall not eſcape ſuffering: *They ſhall* " *ſuffer, but it may be not as I do, but worſe:* " *Mine is but Temporal, theirs ſhall be Eter-* " *nal*; *when I ſhall be ſinging, they ſhall be* " *howling.* Beware therefore of Sin what- " ever you are aware of, *eſpecially in ſuch Times.*

" Yet, I cannot ſay of my own Condition, " but that the Lord in his Providence, hath " Mind of Mercy to me, even in this World: " For, if I had been more favourably dealt " with, I fear, I might have been overcome " with Temptations, as many others are, and " many more, I fear, will be; and ſo ſhould " have gone out of the World, with a more " polluted Conſcience, than through the Mer- " cy of God, now I have. And hence my " Condition is ſuch now as, when I am gone, " will be ſeen not to have been ſuch as many " imagined. It is fit God take me away, be- " fore I fall into theſe Temptations that I ſee " others are falling into, and many others, I " fear, will fall: I wiſh the Lord may pre- " vent it: Yet bleſſed be his Name, that I " am kept both from preſent Evils, and Evils " to come. Some may expect I will regrate " my own Condition; but truely, I neither " grudge nor repine, nor deſire any Revenge. " And, I declare, I do not repent my laſt " going up to *London*; for I had always ra- " ther have ſuffered any thing, than lie under " Reproaches as I did. I deſire not that the " Lord ſhould judge any Man; nor do I judge " any but myſelf: I wiſh, as the Lord hath " pardoned me, ſo he may pardon them, for " this and other Things; and what they have " done to me may never meet them in their " Accounts. I have no more to ſay, but to " beg the Lord, that when I go away, he " would bleſs every one that ſtayeth behind.

After he was undreſſed for the Block, he ſaid, " I deſire you, Gentlemen, all that hear " me this Day, to take Notice (and I wiſh " that all that ſee me, might hear me) that " now, when I am entring into Eternity, " and am to appear before my Judge; and " as I deſire Salvation and Happineſs from " him, from my Birth to my Scaffold, " I am free from my Acceſſion, by my " Knowledge, concerning Council, or any " other way to his late Majeſty's Death: " And I pray the Lord to preſerve his preſent " Majeſty, and to pour his beſt Bleſſings on " his Perſon and Government; and the " Lord give him good and faithful Counſel- " lors ---- Many Chriſtians may ſtumble at " this, and my Friends may be diſcontented; " but when Things are rightly conſidered, " my Friends have no Diſcredit of me, nor " Chriſtians no Stumbling-block; rather an " Engagement."

After which, having taken leave of his Friends, and finiſhed his private Devotions his Head

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Head was cut off by the Maiden, *an Engine that goes with a Pulley, and lets down a ſharp Ax with ſuch a Force, that it never fails to ſever the Head from the Body at one Blow. His Head was ſet on the Talbooth, in the Room of that of the Marquis of* Montroſe, *whoſe Funeral Obſequies were ſolemnized the eleventh of* May *(while* Argyle *lay under Sentence of Death) at the Expence of the Government, with uncommon Magnificence; a Debt juſtly due to the braveſt and moſt loyal of the King's Subjects, who had been ignominiouſly and barbarouſly treated by the Priſoner and his Party, for adhering ſo ſtrenuouſly to the Royal Cauſe.*

Ile is beheaded.

Montroſe's Funeral.

The Priſoner, in his Defence, it is obſervable, denies almoſt every Article with which he is charged; inſiſting, that his Compliance with the Uſurpation was forced, and conſequently, he ought not to be proſecuted for it. In his Speech on the Scaffold, he ſays *He deſigned no Prejudice to the King and Government; that he was real and cordial in his Deſigns to bring the King home, and in his Endeavours for him, when he was at home; and had no Correſpondence with his Adverſaries at that Time, or had any Acceſſion to, or Knowledge of, the late King's Murder*; and all the time King *Charles* II. was in *Scotland, he was ſtill endeavouring his Advantage, his Conſcience bore him Witneſs:* And yet we find the whole Parliament of *Scotland* declaring (without one diſſenting Voice) *That his Compliance with the Uſurpation was wilful and malicious*, and the Hiſtorians of all Parties are of the ſame Opinion. Not to inſiſt on the Evidence of *Echard, that he received* thirty thouſand Pounds, *as a Reward for delivering up the King to the* Engliſh *Rebels at* Newcaſtle; or of the Earl of *Clarendon*, who ſays, *That all Men complained of the Marquis of* Argyle, *who proſecuted the King's Friends with the utmoſt Malice*; or what Biſhop *Burnet* affirms, *That the Letters written by* Argyle *himſelf put the Matter beyond Diſpute.*

Remarks on Argyle's *Trial and Dying Speech.*

Rapin (who was a *French Hugonot*, and an avowed Advocate for the Presbyterians and their Leaders) has admitted *Argyle* to be the moſt dangerous and implacable Enemy King *Charles* I. or King *Charles* II. had in *Scotland:* For Proof whereof, I ſhall ſelect ſome few Paſſages, out of many others we meet with, in that admired Author. He ſays, Vol. xii. p. 468, of the 8*vo* Edition *(Tindal's* Tranſlation) "That it had been reſolved at *Edin-* "*burgh*, that the Committee of Eſtates ſhould "meet the 5th of *February*, and the Parlia- "ment, the 10th of *March*; which Reſo- "lution was taken *notwithſtanding the Mar-* "*quis of* Argyle's *Oppoſition*, who (though a "Presbyterian as to Religion) *was of the* "*ſame Principles with the Independants, as to* "*the Government of the State, and had made* "*a faſt Friendſhip with* Cromwell *and* Vane.

Rapin's Conceſſions relating to Argyle.

Page 469. The Committee found it neceſſary to raiſe an Army of 40000 Men. *It was not poſſible for the Marquis of* Argyle, *who was of the Committee, to prevent this Reſolution; but he found Means, however, to ſtir up the Commiſſioners of the General Aſſembly of the Kirk, who ſome Days after preſented to the Parliament certain Demands proper to ſpin out the Affair.*

One of which Demands was, *That if the Popiſh, Prelatical, or Malignant Party, ſhall again riſe in Arms, this Nation and their Armies, may be ſo far from joining or aſſociating with them, that on the contrary, they may oppoſe them, and endeavour to ſuppreſs them, as Enemies to this Cauſe and Government.*

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Another Demand was, *That his Majeſty ſhall, for Himſelf and Succeſſors, agree to Acts of Parliament, enjoining the League and Covenant, and fully eſtabliſhing Presbyterian Government, Directory of Government, and Confeſſion of Faith, in all his Majeſty's Dominions.*

Vol. xii. p. 476. it is ſaid, *That the Marquis of* Argyle, *and the rigid Presbyterians, ſtrongly repreſented, both in publick and private, that under Colour of acting againſt the Independants in* England, *the Royaliſts, the Mortal Enemies to* Scotland *and the Presbyterians, were going to be ſet up again.* Theſe Repreſentations made ſuch Impreſſions on the People, that the Parliament could not help ordering, that thoſe who had not taken, or ſhould refuſe to take, the Covenant, ſhould not be received into the Army, or joined with it, at their Entrance into *England.* Theſe, and other Obſtacles, *daily ſtarted by the Marquis of* Argyle *and the rigid Clergy*, were the Reaſon the Parliament could not be ſo ſpeedy as the Authors of the Project expected. P. 533, he ſays, *The Marquis of* Argyle, *who had not been able to prevent the raiſing an Army, got uppermoſt again, being ſupported by all who were againſt the War* (with the Uſurpers) and being ſure of the Approbation of the People, levied 3 or 4000 Men, to oppoſe *Monroe* (the King's General) whom *Lanerick* (Lord *Hamilton's* Brother) had joined with ſome Troops, and hindred the Marquis of *Argyle* from making any Progreſs: But *Cromwell* broke all their Meaſures by making directly to *Edinburgh.* The Committee of Eſtates were forced to fly from thence, and ſhift for themſelves, for fear of being hemmed in *between the* Engliſh *Army, and the Marquis of* Argyle's *Forces*; and *Lanerick* and *Monroe*, finding it not in their Power to continue the War, came to an Agreement, *&c.*

P. 534. The Scene of Affairs being thus altered, and the King's Party diſperſed, *Cromwell* repaired to *Edinburgh*, where he was received with great Reſpect: He obtained the Reſtitution of *Berwick*, and *Carliſle, and having concerted all proper Meaſures with the Marquis of* Argyle, returned in Triumph into *England.*

And we find Vol. xiii. p. 37. one of *Argyle's* modeſt Demands, on admitting King *Charles* II. to come to *Scotland*, was, that he would conſent, *that all Matters Civil might be determined by the then preſent and ſubſequent Parliament of* Scotland; *and all Matters Eccleſiaſtical, by the General Aſſemblies of the Kirk:* And he compelled the King to grant this, and to ſign the Solemn League and Covenant, before he ſuffered him to ſet his Foot on Shore.

The Concluſion.

That he ſat in *Oliver's* and *Richard's* Parliaments as a Commoner, (by both of which the King and the Royal Family were excluded and proſcribed) he did not deny at his Trial: And that he accepted Commands and Employments under the Uſurpers in *Scotland*; ſat

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in the Committee of Safety in *England*, and perſecuted the King's Friends with the greateſt Malice of any Man of the *Scotiſh* Nation, is evident from the concurrent Teſtimonies of all his Contemporaries; for which he is, to this Day, applauded by the Sectaries, and deteſted by the Royaliſts, and the Friends of the Conſtitution.

And yet this is the Man that affirms with his laſt Breath, That *he had never any Deſign againſt the King or Government; that he was real and cordial in his Deſires to bring the King home, and in his Endeavours for him, when he was at home; and denies his holding any Correſpondence with his Adverſaries; declaring, that his Compliance with the Uſurpers was altogether forced. This his Conſcience bore Witneſs to*, he tells us from the Scaffold: From whence it will not be difficult to collect, what Credit is to be given to the dying Words of this Nobleman, or to frame an Opinion of the Juſtice of his Sentence.

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The Trial of Sir HENRY VANE, Knt. for *High-Treaſon*, in the Court of *King's-Bench*, the 2d and 6th of *June*, 1662. 14 *Car.* II.

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Vane's Trial.

The Charge.

THE Indictment charges the Priſoner with compaſſing the Death of his Majeſty King *Charles* II, and the Overt-acts laid to prove it, were the keeping him from the Exerciſe of his Regal Authority, ſitting in the Uſurper's Councils, the accepting Civil and Military Poſts under them, and levying War againſt his Majeſty.

Sir *Henry*, at his Requeſt, had the Favour of hearing the Indictment read twice in *Engliſh*, but could not prevail on the Court, to let him hear it read in *Latin*; being told that, though the Records were in *Latin*, yet the Agitation of Cauſes ought always to be in *Engliſh*.

Exceptions to the Indictment over-ruled.

Then he excepted to the Indictment, that the Places and Perſons mentioned in it, were not ſufficiently aſcertained; and that the particular Acts of levying War were not ſet forth: He alſo queſtioned the Juriſdiction of the Court, for that the Facts, he was indicted for, were done by Authority of Parliament; and added, that it did not appear he was that Sir *Henry Vane* that was excepted in the Act of Indemnity: But not thinking fit to abide by his laſt Plea, and his Exceptions being over-ruled, he pleaded *Not Guilty*; and then the Court adjourned.

The Priſoner being brought to the *King's-Bench-Bar* again, the 6th of *June*, challenged thirty two of the Pannel; after which the Jury was ſworn, and charged with him; and the King's Counſel, opening the Indictment,

He is not charged with any Treaſons committed in the former Reign.

obſerved, that though the Priſoner might be charged with many notorious Treaſons, committed during the late Civil Wars, they ſhould confine themſelves to ſuch Facts as were committed within the Reign of his preſent Majeſty: And then the Witneſſes were produced, who proved the Priſoner's Hand to a Warrant, dated the 30th of *January* 1648, directed to the Officers of the Navy, to iſſue out Stores for a Summer's Guard of the narrow Seas. It was proved alſo, that the Priſoner was one of the Uſurper's Council of State, and acted as a Member of that Council, in *February* 1648, the Month after the late King was beheaded: that, by the Order of Parliament for erecting that Council, *they were authorized to ſuppreſs all Perſons pretending Title to the Kingly Government of this Nation, from or by the late King*, Charles Stuart *his Son, or any claiming from or by them, or any other ſingle Perſon whatſoever*; and they were empowered to command the Forces of the Commonwealth for that End, and to raiſe more Forces, if they ſaw fit. Several Orders alſo, ſigned by Sir *Henry Vane*, the Preſident of that Council, for delivering out Arms to the Soldiers, for fitting out Ships, *&c.* were produced in Court: Other Witneſſes depoſed, that they ſaw Sir *Henry Vane* at the Head of the Soldiers, when they were muſtered in *Southwark*, and that he gave them five Pounds to drink. It was alſo ſworn, that he propoſed a new Model of Government; in which he aſſerted, *It was deſtructive to the People's Liberties to admit any earthly King or ſingle Perſon, to the Legiſlative, or Executive Power in this Nation.*

The Evidence.

Vane's Defence.

The Priſoner in his Defence ſaid, that by King, in the Statute of 25 *Ed.* III. was to be underſtood a King *regnant*, in actual Poſſeſſion, and not a King *de jure*, out of Poſſeſſion: That an *Interregnum* was admitted by the Indictment, and all Enſigns of Authority, and Badges of Government, were viſibly in another Name and Stile; and the King's beſt Friends proſecuted their Suits in the Name, and by the Authority, of the Powers then in being.

He objected alſo to the Incompetency of the Evidence, becauſe the Witneſſes did not ſee him ſet his Hand to the Warrant produced in Court; and thought it was not fully proved, that he ſat in the Council of State; and if there were any ſuch Acts of Council, as had been read in Evidence, the Council acted by Authority of Parliament, and of ſuch a Parliament as was conſtituted in an extraordinary Manner, and made indiſſolvable but by its own Act: That this Parliament was a Power *co-ordinate* with the King, and whatſoever he had done by their Authority, could not amount to High-Treaſon, within the Statute of 25 *Ed.* III. for which he cited an Ordinance of Parliament, made in the Year 1642, in which it was declared to be Treaſon, to lay any Imputation of Treaſon on either, or both Houſes.

That it was ſuch a Caſe as never happened before; that the Government being truſted to three Eſtates, they ſhould ſo fall out among themſelves, that the People could not tell which to obey. On ſuch Emergencies, it was impoſſible to act according to the ſtrict Rules of Law; and the Parliament being by the

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the 17 *Car.* I. made a Power *co-ordinate* with the King, no Court inferior to the Parliament, by whose Authority these things were transacted, ought to be Judges in the Case: That the three Estates being disjoined, he thought it best Policy to preserve the Government in its Root, the Commons, by whom it was preserved, and at length restored to its former Course.

He urged also (as the Regicides had done before him) that by the 11 *Hen.* VII. whoever served a King *de facto*, ought not to be questioned for it by a King *de jure*; and that those who had the Power and Exercise of the Royal Jurisdiction, as to Peace and War, coining Money, Life and Death, &c. must be admitted to be the Power *regnant*, though they wanted the Name of King, and were as well within the Statute of 25 *Ed.* III. as a Queen *regnant*, though not named, had been adjudged to be. If the Powers *regnant* had the Thing, though they wanted the Title, the Statute in Reason and Equity ought to be extended to them: *Where the Reason is the same, there is the same Law*, was a known Rule; and there was the same Reason the Subject should be indemnified, when he acted under a Sovereign Authority, which had not the Name of King, as if it had: That the Statute of the 11 *Hen.* VII, was made, that the Subject might safely pay Allegiance where he received Protection, and might not be in Danger of being destroyed by two Powers at the same Time: For the Power *de facto* will be obeyed, and make it Treason to do otherwise, be it Right or Wrong; and if the Subject was at the same time in Danger of committing Treason against a Power *de jure*, he was in a miserable Condition.

That, had the Protector taken the Name and Stile of King, no Treason could have been committed against the King *de jure*: And he hoped they would not take away his Life upon such a Nicety; because an usurping Protector was not clothed with the Title, as well as Power, of King. The Usurper's taking, or not taking, the Title of King, could not alter the State of his Crime, admitting he had the Power of a King.

The Reply to Vane's Defence.

To this Defence of the Prisoner's, the King's Counsel replied, That they admitted the Council of State, of which he was President, acted by the Authority of what he called a Parliament, and of which he himself was a Member; but that the House of Lords, nor an eighth Part of the Commons, were permitted to sit when these Treasons were committed; and that the acting in, and under such an End of a Parliament, was rather an Aggravation of his Offence, than an Excuse; and further, that the Parliament was dissolved by the Death of the late King: That as to the Co-ordination of a Parliament with the King, there was no Colour for such a co-ordinate Power in our Law: The King was ever declared to be Supreme in his Dominions, both by Common and Statute Law: And as to the King's being out of Possession, *Watson* was indicted for High Treason, against King *James* I. before his Majesty set his Foot in *England* nor did it avail him to say, the King was never in Possession of the Crown.

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That the Statute of the 17 *Car.* I. did not give the Long Parliament a greater Authority than another Parliament, though it made them more durable; and if it had, that Parliament was dissolved by the King's Death: That the Question was not, whether a Parliament could commit Treason, but whether a few of the Commons, shaking of their Fellow-Members, and usurping the Government, were not Traitors; and that Privilege of Parliament, even where a Parliament was lawfully constituted, was no Shelter for a Breach of Peace, or Felony, and much less for Treason: And the King's Council produced another Witness, that proved Sir *Harry* was a Member of the *Committee of Safety*, that pretended to Sovereign Authority in their Turn, and sent down Arms after *Lambert*, against General *Monk*, who declared in Behalf of that Assembly, the Prisoner called a Parliament; and therefore the Prisoner had no Pretence in that Case to shelter himself under the Name or Authority of a Parliament. That the Prisoner was one of the Principal Actors in destroying the antient Form of Government, and keeping the King out of Possession; one of the Chiefs of the Usurper's, and put that Force upon others, which he pretended to be under; and therefore had no manner of Colour to claim the Benefit of the Statute of the 11 *Hen.* VII.

Convicted.

The rest of the Arguments of the King's Counsel were the same with those contained in the Trials of the Regicides; to which therefore I refer the Reader, and shall only add, that the Jury found the Prisoner *Guilty*.

Sir *Henry Vane*, being brought a third Time to the Court of *King's-Bench*, on the 11th of *June*, to hear Judgment, presented a Bill of Exceptions to the Judges to seal, but was informed, this was never done in Capital Cases: Then he produced a Petition that the Parliament had preferred to the King, for *remitting his Execution*, with his Majesty's Answer, which were read; but he was told, *That Pardons were only for the Penitent*; whatever his Majesty or the Houses might design once in his Favour, his Behaviour since, in justifying what he had done, and reviling the Administration, had made a great Alteration in his Case, and he had little Room to hope for Mercy.

He justifies the late Rebellion.

Whereupon Sir *Henry*, after having repeated the Substance of his Defence, proceeded to extol the *Covenant*, justify the late Usurpation, and reflect upon King *Charles* I. and those who adhered to him; adding, that he found nothing would satisfy the present Government, but in his Person to condemn all who adhered to the Parliament, that they might be rendered Murderers and Rebels to Posterity, upon Record: And this he said must inevitably have followed, if he had voluntarily given up this Cause without asserting their and his Innocence; by which he should have pulled that Blood upon his own Head, which now he was sure must lie at the Doors of others, and particularly of those that knowingly and precipitately should embrue their Hands in his innocent Blood, under whatever Form or Pretext of Justice.

He

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He begged Pardon indeed for this Freedom; but ſaid, not only his Eſtate and Life were at Stake, but, what was more to him than Life, the Concerns of Thouſands that were in their Graves, and of all Poſterity in Time to come.

He is condemned.

After which Sentence was pronounced againſt the Priſoner, as a *Traitor*: But the King pardoning all the Sentence but the beheading, he was drawn from the *Tower*, on a Sledge, to a Scaffold erected on *Tower-Hill*, on the 14th of *June* 1662, in Order to his Execution.

His Speech on the Scaffold.

When the Priſoner had mounted the Scaffold, he began a Speech to the People; wherein he ſaid, the Sheriff came to him that Morning, and told him, he had received a Command from the King that he ſhould ſay nothing reflecting on the Government; and that he anſwered, he ſhould order his Speech, as near as he could, ſo as to be leaſt offenſive, ſaving his Faithfulneſs to the Truſt repoſed in him, which he muſt ever diſcharge with a good Conſcience, unto Death.

Then he proceeded to harrangue the Crowd, and to tell them, he was not brought thither according to any known Law of the Land: He had indeed been before a Court of Juſtice, under whoſe Sentence he ſtood there; but that he had not the Liberty of laying before them the Grounds and Reaſons of thoſe Actions with which he was charged: That he preſſed the Judges to ſet their Seals to his Bill of Exceptions as his Right, and the Right of every free-born *Engliſhman*, by the Law of the Land; but was finally denied it.

Whereupon Sir *John Robinſon*, the Governor of the *Tower*, who was upon the Scaffold, ſaid, he muſt not be ſuffered to go on thus, railing at the Judges; and that what he affirmed was falſe: But Sir *Harry* ſtill continuing to rail at the Adminiſtration, the Trumpets were ordered to ſound, and drown the ſeditious Harangue; and the Priſoner, finding they would not ſuffer him to proceed on that Subject, turned to another Part of his Speech, which he held in his Hand, and gave an Acconnt of his Converſion at fourteen or fifteen Years of Age, aſſuring the People that he had from that Time preſerved a good Conſcience towards God and Man, and for this he ſhould at laſt ſit down in Glory with Chriſt at his right Hand: He was ready to reſign his Spirit into the Hands of that God that gave it him. Then he returned to State Affairs again, and ſaid, that in whatever he had been engaged as to the Publick, his Deſigns had been for the good of theſe Nations; appealing to the great God of Heaven, and to the Audience, if he had defiled his Hands with any Man's Blood or Eſtate, or ſought himſelf, in any publick Capacity or Place he had been in.

The CAUSE, he ſaid, had been three Times ſtated. 1ſt, *In the Remonſtrance of the Houſe of Commons.* 2*dly*, *In the ſolemn League and Covenant* -------- Then the Trumpets ſounded again, and the Officer endeavoured to take the Paper from him, telling him he treated of Rebellion: Whereupon he tore the Paper in Pieces, and in a very diſcompoſed Manner ſubmitting to the Block, his head was ſevered from his Body.

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He is executed.

A Copy of the entire Speech, being left with a Friend, was afterwards printed; but had little more in it, than a farther Juſtification of the *Good old Cauſe*, which he ſaid, was *the Cauſe of God, and for the promoting the Kingdom of his dear Son Jeſus Chriſt:* Concluding, *that the preſent Storm, and the dark Clouds that yet hung over the Reformed Churches, were not unforeſeen by him, for many Years paſſed: So that the Coming of Chriſt in theſe Clouds, in Order to a ſudden and ſpeedy Revival of his Cauſe, and ſpreading his Kingdom over the whole Earth, was moſt clear to the Eye of his Faith, even that Faith in which he died; whereby the Kingdoms of this World ſhould become the Kingdom of our Lord and of his Chriſt:* Juſt before the Stroke was given, he ſaid, *I bleſs the Lord, who hath accounted me worthy to ſuffer for his Name: Bleſſed be the Lord, that I have kept a Conſcience void of Offence to this Day: I bleſs the Lord I have not deſerted the righteous Cauſe for which I ſuffer.* No Men more maliciouſly more treacherouſly, or more indefatigably fomented and carried on the Grand Rebellion againſt King *Charles* I. or contributed more to bring that Prince to the Block, than the two *Vanes*, Father and Son; which is ſaid to be occaſioned principally by that King's beſtowing his Favours ſo liberally on the Earl of *Strafford*, their Countryman, and Rival at Court; and no one Thing piqued them more, than that Earl's, taking the Title of *Raby* from a Caſtle or Seat which belonged to the *Vanes*, which Title the Father himſelf expected, and Pretended his Majeſty had promiſed to confer on him: Nor did any Man act more vigorouſly in keeping King *Charles* II. out of the Poſſeſſion of his Throne, than Sir *Henry Vane* the younger, whoſe Trial we have juſt reviewed: No Man was more intimate with *Cromwell* and *Argyle*, or more conſcious to their blackeſt Deſigns, though he had the Addreſs to excuſe himſelf from acting as one of the late King's Judges; nor was any Man more zealous or inſtrumental in ſubverting the Conſtitution in Church and State.

His entire Speech publiſhed after his Death.

The Subſtance of his Defence ſeems to be no more than this, *I acknowledge I did with others uſurp the Government of theſe Nations, and having killed our King, and taken Poſſeſſion of his Dominions, I apprehend we thereby became rightful and lawful Sovereigns; and being thus poſſeſſed of the ſupreme Power, I held it was then High Treaſon in the ſucceeding King and his loyal Subjects, to oppoſe us, and attempt his Reſtoration.* But ſurely this was the weakeſt, as well as the moſt impudent Defence that ever was made by a Rebel in a Court of Juſtice: He did not pretend the King had oppreſſed his Subjects, or forfeited his Right to the Crown; but that by Murder, Robbery, and a ſucceſsful Rebellion, they had acquired a Right to tyrannize

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tannize over the Nation, and treat both Prince and People as their Slaves; a Defence more criminal than the Rebellion it ſelf, and which deſerved only to be anſwered by the Ax or the Halter.

His Character by Burnet.

Biſhop *Burnet*, ſpeaking of this Gentleman, ſays, that he had a Head as darkened in his Notions of Religion, as his Mind was clouded with Fear; and though he ſet up a Form of Religion, it conſiſted rather in withdrawing from all other Forms, than in advancing any Opinions or Forms of his own: That he was of the Sect called *Seekers*, and ſeemed to wait for ſome new and clearer Revelations; and that though he had diligently ſtudied Sir *Harry*'s Works, he ſaid, he could never diſcern what he aim'd at. However, the Biſhop ſays, his Execution was mightily blamed, becauſe the King's Declaration from *Breda*, was a full Indemnity to all, except the Regicides: Beſides, he ſays Sir *Harry* did not approve of putting the King to Death, or of the Force put upon the Parliament; but for ſome Time withdrew from the Scene of Action, to ſhew his Diſlike of the Uſurpers Proceedings.

Burnet miſtaken in ſome Facts.

But ſurely this Right Reverend Father was under a very groſs Miſtake; for, if we examine the Facts he aſſerts, we ſhall find in the firſt Place, that in the Declaration from *Breda*, all thoſe were excepted out of the Indemnity; and that Sir *Harry Vane* was excepted *by Name*. It is true, that upon Sir *Harry*'s expreſſing ſome Abhorrence of his Treaſons, the Parliament, did Petition his Majeſty to reſpit his Execution, (not to pardon him, as his Friends ſuggeſt); and his Majeſty did return a general Anſwer, from whence it was ſuppoſed he would be favourably dealt with: But Sir *Harry*'s Conduct afterwards, was ſo very provoking, juſtifying all that he had done, and ſhewing a Diſpoſition to act the ſame Tragedy over again, that he himſelf obſerves, that thoſe very Members who had been the forwardeſt to ſave, were afterwards the readieſt to abſolve the King from his Promiſe, as he calls it; though it is certain, his Majeſty made no other Promiſe, if he had made any, than to reſpit his Execution, till it appeared how he would behave himſelf, for the Parliament asked no more. It is ridiculous alſo to think that the ſame Men who had ſolicited his Pardon, and obtained a Promiſe of it from the Crown, ſhould afterwards addreſs the King for his Execution. And the Biſhop himſelf acknowledges, that the principal Reaſon of ſuffering Juſtice to take Place on this Occaſion, was, the Apprehenſion the Government was under, that he would one Day embroil the Nation in a Civil War again, towards which it appeared he did not want Talents, Intereſt, or good Will.

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Vane's Character by another Hand.

A celebrated Writer in giving a Character of Sir *Harry Vane*, ſays, he was a Man of great Natural Parts, and of a very profound Diſſimulation, of a quick Conception, and very ready, ſharp, and weighty Expreſſion; that he had an unuſual Aſpect, which, though it might naturally proceed from his Father and Mother, neither of which were beautiful Perſons; yet made them think there was ſomething in him extraordinary, and his whole Life made good that Imagination. He went from School to *Magdalen College* in *Oxford*, where his Life was not very regular, from the Univerſity he went to travel, firſt in *France*; but ſpent moſt of his Time at *Geneva*, and at his Return to *England*, appeared to have contracted great Prejudices and Bitterneſs againſt the Church, both as to her Government and Liturgy; which ſeemed at firſt to diſpleaſe his Father, who was hitherto conformable, and exceeding ſharp againſt thoſe who were not: After ſome ſhort ſtay in *England*, he thought fit to make a Voyage to *New-England*, where the Sectaries abounded, and had withdrawn themſelves from the Juriſdiction of their Eccleſiaſtical Governors: This Gentleman was no ſooner landed in *New-England*, but his Parts and Quality, being the Son of a Privy-Councillor, but above all, his Principles gave him ſuch an Intereſt in that People, that they appeared infinitely fond of him, and in ſome ſhort Time elected him their Governor: But it ſeems he would have *reformed* even the *Puritan Reformation*, about which, the People and our Governor diſagreeing, and growing heartily weary of each other, he returned to *Old-England*, whereby his Father's Intereſt, he obtained the Office of Treaſurer of the Navy, jointly with Sir *William Ruſſel*; and ſeemed well ſatisfied with the Government, till his Father appeared diſguſted, on the Earl of *Strafford*'s having the Title of *Raby* (the Seat of the *Vanes* in *Yorkſhire*) conferred on him by his Majeſty. But afterwards aſſociating himſelf with *Pym*, the great Incendiary, in the Houſe of Commons, and all other diſaffected and ſeditious Perſons, he became one of the moſt violent Enemies againſt the Government, and with his Father communicated thoſe Secrets to the Commons, and made ſuch malicious Gloſſes on them, as at length proved the Ruin of the Earl.

The Trial of JOHN JAMES for *High-Treaſon*, in the Court of *King's-Bench*, the 14th of *November*, 1662. 14 Car. II.

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James's Trial.

THE Priſoner, being arraigned, held up his Hand with his Glove on, which the Court ordered to be taken off. The Indictment charged him with compaſſing the King's Death, and the Subverſion of the Government, and the Overt-Act, laid in the Indictment, to prove the Treaſon of his Heart, was his preaching at a Meeting-Houſe in *White-Chapel*, and declaring, (1) "That the King was a bloody

The Charge.

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" bloody Tyrant, a Blood-ſucker and Blood-
" thirſty Man, and his Nobles the ſame.
" (2.) That the King and his Nobles had
" ſhed the Blood of the Saints at *Char-*
" *ing-Croſs*, and the Blood of the Covenanters
" in *Scotland*. (3.) That the King was
" brought in to this End, to fill up the Mea-
" ſure of his Iniquity; and that the King's
" Cup of Iniquity had filled more within
" this laſt Year, than in many Years before.
" (4.) That he bemoaned they had not im-
" proved their Opportunity when they had
" the Power in their Hands: That it would
" not be long before they had Power again,
" and then they would improve it better:
" And he bewailed the Apoſtacy of the
" People of God, and ſaid, *They had not*
" *fought the Lord's Battles throughly; but*
" *when the Lord ſhould give his Work into*
" *their Hands again, they would do it better.*
" (5.) *That the Death and Deſtruction of*
" *the King drew very near.*

The King's Counſel, having opened the Indictment, and obſerved that the late Rebellion was incited and fomented by ſuch ſeditious Diſcourſes as theſe, produced their Witneſſes.

The Evidence.

John Tipler depoſed, that being in a Yard adjoining to the Meeting-Houſe, he did, through a Window, ſee the Priſoner *John James* in the Pulpit, and heard him ſpeak the Words laid in the Indictment; adding, that he mightily applauded *Oliver Cromwell*, ſaying, that every Finger of his was a Champion: And that the Deponent informing Alderman *Chard*, a Juſtice of Peace, what he had heard, the Alderman came, and apprehended the Priſoner in the Pulpit, and took all the Men that were at the Conventicle, committing ſuch of them as refuſed the Oath of Allegiance; but ſet the Women and the reſt at Liberty: And the Alderman made Oath of his ſeizing the Priſoner, *&c.* as the firſt Witneſs had depoſed. *Osborne*, another Witneſs, depoſed he was within the Meeting-Houſe, and heard the Priſoner ſpeak the Words laid in the Indictment, or to that Effect: And another Witneſs depoſed, that, being in *Tipler*'s Houſe, and hearing a Perſon ſpeaking very loud, he went out and heard the Speaker ſay, *That the Lord had a great Work for his People to do; and that they were the People that muſt do it:* But could not be poſitive that the preacher was the Perſon that ſpoke them.

The Priſoner's Witneſſes.

On the other Hand, the Priſoner produced four Witneſſes that were at the ſaid Meeting, who depoſed, that the Words laid in the Indictment, were not ſpoken by the Priſoner; but they would not declare who they were ſpoken by.

He produced another Witneſs alſo, who depoſed, that *Osborne* ſaid he was frightened to give Evidence againſt the Priſoner; but *Osborne* averred upon his Oath, in open Court, that he ſaid no ſuch Thing.

His Defence.

The Priſoner ſaid in his Defence, That he had no Malice againſt the King, but prayed for his Soul; that he had never been in any Office or publick Employment againſt his preſent Majeſty or his Father, and denied he ſpoke the Words laid in the Indictment, or any others to that Effect; that he had always declared againſt *Cromwell*'s Uſurpation, and ſuffered under it; and bid the Jury take Care therefore of ſhedding his Innocent Blood; for the Lord Jeſus Chriſt was King of Nations, as well as King of Saints; and that the Government of Right belonged to him. *(Intimating that the Saints ought to have the Adminiſtration under him.)* Whereupon the Chief Juſtice interrupted him and demanded; if he thought he was in his Conventicle at *White Chapel?* He alſo ordered a Paragraph in the Act for the Preſervation of the King's Perſon, to be read, wherein it was declared, *That whoever ſhould by Printing, Preaching, or Writing, endeavour to levy War againſt the King, or compaſs the King's Death, ſhould be judged a Traitor:* And the Court informed the Priſoner that it was the Imagination of his Heart that was the Treaſon; his Preaching was but the Overt-act or Manifeſtation of the Treaſon: And whereas he objected, that the very Words laid in the Indictment were not proved, it was anſwered, that if Words to that Effect, which diſcovered the Treaſon of his Heart, were proved againſt him, that was ſufficient; it was not neceſſary to prove the very Words. It was obſerved alſo, that though the Priſoner and his Witneſſes denied his ſpeaking the Words; they had not ſhewn who ſpoke them, or what he did ſay: And that no Criminal would ever receive his Deſert, if his Denial, or the Denial of his Accomplices, on their bare Words, would acquit him: Whereupon the Jury, after a Quarter of an Hour's Receſs, brought the Priſoner in GUILTY, and Judgment was pronounced on him as a Traitor.

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He is convicted, and condemned.

John James being drawn on a Sledge, from *Newgate* to the Gallows at *Tyburn*, on the 26th of *November* 1662, obtained leave of the Sheriff to make a Speech to the People; wherein he firſt endeavoured to clear himſelf from being a Jeſuit (with which he was charged by ſome) by ſhewing he was born of mean Parents, and wanted that learned Education, that Jeſuits uſually have: On the other Hand, he declared, he held the *ſeventh* Day ought to be the Chriſtian as well as the Jewiſh Sabbath; and ſaid, *he did expect the viſible Kingdom of* Jeſus Chriſt *upon Earth, and that* Jeſus Chriſt *the Son of God was King of all the Nations of the World; and according to* Rev. xi. 15. *the Kingdoms of this World were become the Kingdoms of the Lord and of his Chriſt, and he ſhould reign for ever and ever; which he ſaid could not be meant of a ſpiritual Kingdom; for the Text ſaid expreſly the Kingdoms of this World:* But maintained to the laſt, that what he was charged with was falſe, though ſeveral Witneſſes had ſworn it in Court, for which he hoped God would forgive them: And concluded, as Criminals uſually do, with pious Exhortations to the Multitude. After which he was turned off, and hanging till he was quite dead, he was embowelled and quartered as a Traitor; his Quarters ſet upon the City Gates, and his Head upon the Bridge: But his Head

His Speech at the Gallows.

He is executed.

was

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was afterwards taken from the Bridge, and ſet up near his Meeting-Houſe in *White-Chapel.*

Remarks on James's Trial.

This *James* appears to have been a *Fifth-Monarchy-Man*, whoſe Principles were indeed deſtructive of all Government: They raiſed a Rebellion in the City the very Year of the Reſtoration, and were with Difficulty ſuppreſſed, being thoroughly perſuaded *they fought the Lord's Battles, and ſhould be ſupported by a ſupernatural Power.* The Government therefore will be juſtified by all conſidering Men, in proceeding with Rigour againſt a Broacher of ſuch Doctrines; nor do I think he had any Reaſon to complain of Hardſhip on his Trial: He inſiſted indeed, that the very Words laid in the Indictment, ought by Law to have been proved, but it appears from numerous Inſtances in the *State Trials*, that where any one is indicted for compaſing the Death of the King, other Words of the like Tenor may be proved, as an Evidence of it, beſides thoſe laid in the Indictment. It is true, in an Indictment for a *Libel*, the very Words ought to be ſpecified, (and thoſe Words proved); but in an Indictment for *High-Treaſon*, in compaſſing the King's Death, and where Diſcourſes or Writings are laid as Overt-Acts; there it is ſufficient to prove the Effect or Tenor of the Words laid in the Indictment; it is not neceſſary to prove the very Words.

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The Trials of THOMAS TONGE, GEORGE PHILLIPS, FRANCIS STUBBS, JAMES HIND, JOHN SELLERS, and NATHANIEL GIBBS, for *High-Treaſon*, at the *Old-Bailey*, *London*, the 11th of *December*, 1662. 14. Car. II.

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Trial of Tonge, &c.

The Charge.

THE Indictment charges the Priſoners with compaſing the Death of the King: And the Overt-Acts, laid as an Evidence of it, where, their conſulting and agreeing, on the 31ſt of *October* then laſt paſſed, to depoſe his Majeſty, to alter the Government, to ſeize the King's Perſon in his Palace of *Whitehall*, ſurprize the *Tower* of *London*, *Windſor Caſtle*, &c.

The Evidence.

William Hill, the firſt Witneſs, depoſed, that he was at a Conſultation with the Priſoner *Hind*, and ſome others, at the *Ship-Tavern*; and that all, or moſt, of the Sects of Diſſenters, appeared to be concerned in this Plot againſt the Governmenment (*viz.*) *Fifth-Monarchy-Men*, *Anabaptiſts*, *Independents*, *Fighting Quakers*, and the *Congregational Churches*; that they reſolved to endeavour a Deliverance from their Adverſaries at *Whitehall*, and had much Diſcourſe to that Effect: That at another Meeting with the Priſoner, *Stubbs*, *Hind*, *Tonge* and others, mention was made of a Council of Six that conducted the Deſign; that he underſtood *Ludlow* was to be Commander in chief, that Horſes and Arms were ready for an Inſurrection on *All-hallows Eve*; that *Windſor-Caſtle* was to be ſurprized, and they expected a Riſing in the Weſt: That a Declaration was read among the Conſpirators, ſetting forth the Danger of Popery, and complaining of Monopolies; declaring for Liberty of Conſcience, and a free Commonwealth: And five thouſand Letters were prepared to be diſperſed in Town and Country, affirming that the Papiſts deſigned a general Maſſacre of the Proteſtants on *All-hallows Eve*, and inciting the People to take up Arms and ſtand upon their Defence; and this was to ſerve for a Pretence for the intended Inſurrection of the Malecontents. He depoſed alſo, that there was a Deſign to ſeize the King's Perſon in *Whitehall*, together with the Duke of *Albemarle*, and the Lord Mayor; and they diſcourſed of extirpating all Kings, Princes, and Dukes, that they might have a free State, and no more be troubled with ſuch Perſons, or with Lawn Sleeves or Surcingles: And this Witneſs heard that a Party of Horſe was to come to Town the Night before the intended Inſurrection. *Riggs*, another of the Conſpirators, depoſed, that on the 24th of *October*, the Day before they were taken, they had a Meeting, and diſcourſed concerning the taking *Whitehall*, and the *Tower*, *Tonge*, *Stubbs* and *Hind*, the Priſoners being preſent; that *Gibbs* told the Deponent, *Ludlow* was in Town, and that the Council of Six was broken up, and they had ſent Meſſengers into the Country to give Notice and to make their Intereſts; that he had ſeen a Letter alſo, intimating that there would be a Maſſacre, and a Riſing of the Papiſts: And that being with *Phillips*, *Tonge*, and *Stubbs*, *Phillips* propoſed the ſurprizing the King at *Camberwell*, as he came from *Hampton-Court* to ſee the Queen Mother at *Greenwich*; and *Tongue* ſaid, they might have ſuch an Opportunity twice every Week.

Bradley depoſed, that he was with the Priſoners *Tonge* and *Stubbs*, at *Tonge*'s Houſe, and that they diſcourſed how *Whitehall* might be ſurprized; that he had at ſeveral other Times, diſcourſed with the Priſoner *Hind* and others, about ſurprizing the King, the Duke, the General, and as many more of the Council as they could ſeize: That the Priſoner, *Gibbs*, informing them the Scheme was ready to be put in Execution, their Council broke up, and Meſſengers were ſent into the Country to give Notice; and that *Ludlow* was in Town, and to be their General.

He is executed.

Tyler, depoſed, That he had heard *Tonge*, and others, diſcourſe of ſurprizing *Whitehall*, and diſmounting the great Guns there, and of the Service it would be to ſeize the King, the

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the Duke, and the Lord *Albemarle:* That *Tonge* ſaid he ſerved the Suttlers in the *Tower*, and was ſo well acquainted there, that he would undertake, at Ten or Eleven at Night, to ſurprize that whole Fortreſs, with forty Men: That he alſo ſerved the Suttlers at *Windſor*, and was ſo well acquainted with the Soldiers, and one of the Gunners there, that the Caſtle might eaſily be ſurprized: That the Conſpirators propoſed to convert the Government into a Common-wealth; to which End all Intereſts would unite, (*viz.*) *Quakers*, *Fifth-Monarchy-Men*, *Anabaptiſts*, *Independents*, *Presbyterians*, and *Levellers*; and, at their laſt Conſultation, they all obliged themſelves to ſee what Intereſt they could make among the *Presbyterians*; becauſe they looked upon them as the Perſons who had moſt Strength and Money: That the ſeveral Counties of *England* were ripe, and forward for Action; being in Dread of a Maſſacre by the Papiſts, on *All-hallows Eve*.

The Examination of Phillips *read.*

Then *Phillips*'s Examination was read in Evidence, wherein he confeſſed, That *Riggs*, late Chaplain to Admiral *Blake*, (but at that Time a Brewer's Clerk) aſſured him, there would be a Riſing of divers godly People, in Arms, for Preſervation of Religion; and, that they intended to ſeize the King's Perſon at *Camberwell*. And the Examinant demanding of *Riggs* why they had not yet ſeized the King, he ſaid, they were not then ready; becauſe the Congregational Churches and they were not fully agreed; but that things were now near ready, both in Town and Country: That *Riggs* afterwards carried the Examinant to *Tonge*'s Houſe, who had been formerly a Captain in the Rebels Army, but then ſold Tobacco and Brandy on *Tower-Hill*; and, that *Tonge* told *Riggs*, he had prevailed on ſome of the Soldiers at *Windſor*, to deliver up that Caſtle: That *Riggs* ſaid he was going to aſſiſt in the ſurpriſing two Caſtles in *Kent:* That *Ludlow* was to command, and that there was a Council of Six that conducted the Deſign, and ſat but one Day in a Place; nor were they to be ſpoken with by any, but the Agitators of each County, who were employed in preparing all Parties in the ſeveral Counties; and that the Six were of ſeveral Opinions, (Perſuaſions or Denominations of Diſſenters,) that all Parties might be united: That the Examinant, being a Serjeant of the Artillery, did promiſe to give them the Word, when the general Riſing ſhould be; and that all the ſeveral Churches (Sects) promiſed to join, and the *Fifth-Monarchy-Men* were to lead the Van.

That after the King ſhould be ſeized, they had a Declaration ready to diſperſe, againſt Biſhops and the Common-Prayer, and for Liberty of Conſcience. That one *Baker* alſo informed the Examinant, that there were Arms and Powder diſtributed in ſeveral Places; and their Friends were ready in all Counties, only waiting for the Day: That *Riggs* alſo acquainted the Examinant with their Deſign of ſurprizing the *Tower*, when Sir *John Robinſon* the Governor ſhould come home late in the Evening.

Sir *William Morrice* and Sir *Henry Bennet*, Principal Secretaries of State, alſo depoſed, That they had received Letters from ſeveral Counties, of a Report that was ſpread about, That the Proteſtants were to have their Throats cut by the Papiſts, on a certain Day; and that theſe Rumours were propagated, in order to induce the People to join the Malcontents.

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Sir *John Talbot* depoſed, That theſe Reports occaſioned great Diſturbances in *Warwickſhire* and *Worceſterſhire*. Sir *John Weld*, and Mr. *Hodges*, depoſed the like, as to *Dorſetſhire* and *Shropſhire*; adding, that ſeveral Perſons had been taken up on theſe Reports.

The Priſoners ſaid little in their Defence; but, that they had not engaged in any *formed* Deſign againſt the Goverment; though they could not deny, but they had heard ſome ſuch Diſcourſes as the Witneſſes teſtified. They obſerved alſo, that *Hill* and *Riggs*, two of the Witneſſes, had acknowledged themſelves Accomplices in the Treaſon they accuſed them of; and, therefore, were not legal Witneſſes: To which the Court replied, That Accomplices were lawful Witneſſes, till convicted; and, beſides, there were ſeveral corroborating Circumſtances to ſupport their Teſtimony. That the being preſent where Treaſon was ſpoken, and ſhewing an Approbation of it, was Treaſon in the Hearer, as well as the Speaker: Then the Jury withdrew, and within an Hour returned into Court with their Verdict, that *Tonge*, *Phillips*, *Stubbs*, *Sellers*, and *Gibbs*, were GUILTY. As to *Hind*, he confeſſed the Fact, and would not abide his Trial.

The Priſoners convicted.

The Priſoners being afterwards called to Judgment, and asked what they had to ſay, why Sentence ſhould not be pronounced againſt them, threw themſelves on the King's Mercy, and were condemned as Traitors.

And condemned.

Of theſe ſix Priſoners, two were pardoned, (*viz.*) *Hind* and *Sellers*; but the other four, (*viz.*) *Tonge*, *Phillips*, *Gibbs*, and *Stubbs*, were drawn on Hurdles to *Tyburn*, on the 22d of *December:* Where, being permitted to ſpeak by the Sheriff, *Tonge* confeſſed he had been in Company where he had heard Men contrive the Buſineſs, for which he was condemned to die: *And, that he was led to join with them, having been ſome Time in the Army, and held the Cauſe to be good.*

Two pardoned.

Four ordered to be executed.

They confeſs their Guilt at the Gallows.

Phillips ſaid he had not any murderous Thought againſt the King; that he had ventured his Life for his Majeſty, and was far from any ſuch Thought: That he never acted againſt him in any Thing, but this; and it was his Ignorance in the Laws, that he did not diſcover the Plot; *acknowledging, he was juſtly found Guilty.*

Gibbs made a long Speech, or rather Sermon, under the Gallows, in the fanatick Strain; but all he ſaid to the Purpoſe, was, *That he had heard treaſonable Diſcourſes, and, was ſo far guilty, through his Ignorance in the Laws, that he did not reveal it.*

Stubbs alſo, after having made a Recapitulation of his whole Trial, *confeſſed his being in Company with the Conſpirators, and his hearing treaſonable Words*, which he did not diſcover, being ignorant of the Law, he ſaid, in that Caſe; and begged his Majeſty's Pardon.

After

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After which the Priſoners were executed as Traitors, and their Quarters delivered to their Friends to be buried; but their Heads were ſet up either on or near *Tower-hill*.

The Four Executed.

Remarks on Tonge's &c.

The Continuers of *Rapin* pretend to queſtion the Truth of this Conſpiracy, though the Criminals confeſſed it at the Gallows; and they have made two Miſtakes in their Relation of it, which ſhews they took but little Care to enquire into the Matter, or elſe deſignedly impoſed upon their Readers. For, firſt there were but Four of the Conſpirators executed, whereas they make them to be Six: And, ſecondly, there were ſeveral more of the Conſpirators diſcovered, beſides thoſe that were executed; and, particularly ſome that were made Witneſſes againſt the Priſoners; and yet theſe accurate Writers affirm, That there were *none* diſcovered but the Six that were *executed:* (they ſhould have ſaid *tried*) and even with this Correction, what they aſſerted was far from being true.

1662. 14 Car. II.

1663. 15 Car. II.

The Trial of MARY MODERS, *alias* STEDMAN, (uſually called the *German Princeſs*,) for *Bigamy*, at the *Old-Baily*, the 4th of *June*, 1663. 15 *Car.* II.

1663. 15 Car. II.

Moders her Trial.

The Evidence.

THE Indictment charged the Priſoner with Felony, in marrying one *John Carleton*, her firſt Husband, *Thomas Stedman*, being alive.

Knot, the principal Witneſs, depoſed, That, about nine Years before he gave the Priſoner in Marriage to *Thomas Stedman*, at St. *Mildred*'s in *Canterbury*, ſhe being then about nineteen; That they were married by one Parſon *Man*; and that *Stedman* and his Wife lived together about four Years, in *Canterbury*, and had two Children; and, that he ſaw *Stedman* alive at *Dover*, the laſt Week: But, he could not tell whether they were married according to the Rites of the Church of *England*, or not; only he remembred the Marriage was ſome little Time before the Ordinance was made, that gave Juſtices of Peace an Authority to marry People. Other Witneſſes depoſed, That they ſaw *Stedman*, the firſt Husband, at *Dover*, the preceding Week; that he acknowledged he married *Mary Moders*, of *Canterbury*; that *Knot* gave her in Marriage, and, that he would have come up as an Evidence againſt her, if he had not wanted Money for his Journey.

Another Witneſs depoſed, That the Priſoner was on board her Husband's Ship in the *Downs*, bound for *Barbadoes*; and, that *Thomas Stedman*, her Husband, came with an Order, and fetched his Wife, the Priſoner, on Shore.

And Witneſſes being called to prove the Second Marriage, the Priſoner acknowledged that, but denied the Firſt.

The Priſoner's Defence.

The Priſoner ſaid in her Defence, that this Proſecution was promoted by her Husband *Carleton*'s Father, becauſe ſhe refuſed to make over what ſhe had to his Son. That ſhe was, indeed, a Foreigner, and Mr. *Carleton* underſtanding ſhe was a Woman of Subſtance, by a Letter he intercepted, ſolicited her with the greateſt Importunity, till he obtained her Conſent to marry him; and was ſo much in Haſte to ſecure her Fortune, that he married her firſt without a Licence, and, ſome few Days after, with a Licence: That upon her refuſing to comply with the Demands of the Father and Son, they had forged this Story of her being married to a Man at *Canterbury*. That ſeveral People of that City, had been brought to the Priſon, in Order to make them Witneſſes againſt her, but none of them knew her; and it was ſtrange no Regiſter or Certificate of her Marriage appeared, if ſhe was married at *Canterbury*; and no other Teſtimony, but the Evidence of this paltry Fellow *Knot*; and though they had depoſed ſhe was nineteen Years of Age, nine Years ago, ſhe was not one and twenty at this Time.

Obſervations of the Court on the Evidence.

The Court ſeemed diſſatisfied, the firſt Husband did not appear, and ſaid, they muſt not condemn a Perſon upon Hear-ſay, obſerving to the Jury, that the Evidence of the firſt Marriage, depended on the ſingle Teſtimony of *Knot*, and it was ſtrange if they lived together four Years, and had Children, that no Body elſe was brought to prove it: And that, if they did find her Guilty, ſhe muſt die, for that a Woman could not have the Benefit of Clergy; whereupon the Jury acquitted her.

Remarks on the Trial of Moders.

There ſeems to be very little Room for Remarks on this Trial, except it be, that unleſs both Marriages appear to have been celebrated by a Miniſter of the Church of *England*, or ſome Roman Catholick Prieſt, the ſecond Marriage is not Felony. And, though a Woman could not have the Benefit of Clergy then, ſhe may now, by a Statute made ſince the Revolution; or, at leaſt, what is equivalent to it.

1663. 15 Car. II.

The Trials of Colonel JAMES TURNER, and of JOHN TURNER, and ELY TURNER, his Sons, and MARY TURNER, his Wife, and of WILLIAM TURNER, an Accomplice, for *Felony and Burglary*, at the *Old-Baily*, *London*, the 15th. 16th, and 19th of *January*, 1663. 15 *Car.* II.

1663. 15 Car. II.

Turner's *Trial.*

The Charge. THE Indictment charges the Priſoners, *James*, *John*, and *William Turner*, with Felony and Burglary, in breaking open the Houſe of *Francis Tryon*, Merchant, and robbing him of Jewels and Money, to the Value of thirteen or fourteen hundred Pounds. And the ſaid *Mary Turner*, and *Ely Turner*, were charged with receiving, comforting, aiding, and maintaining the ſaid *John Turner*, knowing him to have committed the ſaid Felony and Burglary.

To which Indictment the Priſoners having ſeverally pleaded not Guilty, *James Turner*, the Father, complained to the Court, that the Sheriffs had taken Poſſeſſion of his Houſe, and ſeized his Goods; and, upon this Occaſion, the Lord Chief Juſtice *Hyde* obſerved, that though the Goods of a Man, accuſed of Felony, were not forfeited till Conviction, yet it was prudent in the Sheriffs, and agreeable to Law, to take Care the Goods were not embezzled. However, he ſaid, the Priſoner might have what Part of them he would, for his preſent Supply; and, if any of his Friends would give ſecurity, they ſhould be forth coming, if he happened to be convicted, they might have the keeping of them.

The Sheriffs ſecure the Priſoners Goods, before Conviction.

The Evidence. A Jury being ſworn, and charged with the Priſoners, the Witneſſes appeared; and firſt Sir *Thomas Aleyn*, who took the Priſoners Examination, depoſed, That hearing Mr. *Tryon* had been robbed, he went to viſit him, and took the Examination of Mr. *Tryon*'s Man and Maid, who ſaid they ſupped abroad, at a dancing School, that Evening their Maſter was robbed, and uſed frequently to go out to Supper, at Colonel *Turner*'s, an intimate Acquaintance of their Maſter's, after their Maſter was in Bed, which gave the Deponent ſome Suſpicion that the Colonel might be concerned in the Robbery. He proceeded, therefore, to examine him, and his Wife and the Colonel; not making ſatisfactory Anſwers, he ordered his Houſe to be ſearched; but finding nothing there, he ſuffered him to go about his Buſineſs. That, the next Morning, Alderman *Love* informing the Deponent the Money was carried to a Houſe in the Minories, he went thither, and found Colonel *Turner* putting ſeveral hundred Pound Bags into a Cheſt, which confirmed him in his Suſpicions, and the Colonel deſiring to go to Mr. *Tryon*'s, the Deponent went with him thither, and the Colonel acknowledged he knew the Thief that took the Money and Jewels, and promiſed Mr. *Tryon* he ſhould have them again, and afterwards produced moſt of them, except a Carkanet of Diamonds and Jewels, of the Value of 200 *l.* and ſaid, if they would not proſecute him, he would bring that, and whatever elſe was loſt; but the Deponent committed both him and his Wife to *Newgate*, they appearing to be acquainted with the Robbery.

Mr. *Tryon* depoſed, that about Eleven at Night, two Men came to his Bed-ſide, and one of them, who had a Lanthorn, waked him; and demanding who they were, they made him no Anſwer, but bound and gagged him, and uſed him barbarouſly. That about an Hour after they were gone, he rolled himſelf off the Bed, and, getting to the Window, cried out, *Thieves!* whereupon the Neighbours came to his Aſſiſtance; and going into his Warehouſe, he found the Money and Jewels gone, and obſerved it muſt be ſomebody that knew where he laid them, as *James Turner* the Priſoner did, with whom he was very intimate.

Hill, Mr. *Tryon's* Man, depoſed, That when he went out that Evening, he left his Maſter's Door double-locked, and the Jewels ſafe; but when he returned, all the beſt were gone. That queſtioning the Colonel, when he was in Cuſtody, how the Thieves got in, he anſwered, one of them got into the Houſe in the Day-time, and concealed himſelf there till Night, when he let the others in: And that, about a Year before, the Colonel would have had him got a Will forged for old Mr. *Tryon*, and made himſelf, and ſome Friends, Executors: That he was at Mr. *Starkey*'s at Supper, when the Robbery was committed; and hearing of it, he ran Home, found the Doors open, and the Neighbours there.

Elizabeth Fry depoſed, That Mrs. *Turner* treated with her, concerning lodging ſeveral Sums of Money at the Deponent's Houſe, and that the Colonel, and his Son *Ely*, brought as many Bags thither, as ſhe underſtood amounted to eleven hundred Pounds. Several other Witneſſes were examined, and confirmed the Teſtimony of theſe, particularly Mr. *Vanden-Anchor*, and the Neighbours who came in on Mr. *Tryon*'s crying out Thieves; and they obſerved that all Places had been opened with Keys, or Pick-Locks, to come at the Treaſure, and that nothing was broken.

Colonel James Turner's Defence. Colonel *Turner*, in his Defence, averred, That he and his Family were in Bed and aſleep when the Robbery was committed, and that the Conſtable coming to his Houſe, and acquainting him with it, he immediately went to his Friend Mr. *Tryon*, to give him what Aſſiſtance he could; and that he afterwards went in ſearch of one *Wild*, that he ſuſpected had done it, and having found *Wild*, he promiſed to return the Money and Jewels again, on Condition he ſhould not be proſecuted, which the Priſoner promiſed he ſhould not, by Mr. *Tryon*'s Directions; and that the Money was indeed brought to the Priſoner's Houſe, and afterwards carried to a Houſe in the Minories, and then *Wild* and his Confederates, promiſed to bring the reſt of the Things, but his, (the Priſoner's) being taken into Cuſtody prevented it.

Then

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The Evidence for the Priſoner.

Then *Moſely* the Conſtable was examined, on the Priſoner's Behalf, who depoſed, That he came to Mr. *Tryon*'s on the *Thurſday* Night, hearing he was robbed, and found him bound. That the Deponent afterwards went to Colonel *Turner*'s, and asked where his Sons were, and he ſaid, they were in Bed, and deſired him to go up and ſee.

A Servant of the Marquis of *Dorcheſter*, depoſed, That Colonel *Turner*'s Sons were at his Lord's Houſe that Night the Robbery was committed, from Seven till Three a-Clock.

Colonel *Turner*'s Maid depoſed, That her Maſter and his Sons were at Home all that Night the Robbery was committed, and the next: *But it appeared that no Credit was to be given to her Teſtimony.*

Mr. *Cook* depoſed, that he had known Colonel *Turner* twenty Years, dealt with him for ſeveral hundred Pounds, and truſted him, and found him very faithful. That he had ſeen Jewels in his Poſſeſſion, of the Value of eight or ten thouſand Pounds; and if he had been ſuch a Perſon as he was accuſed to be, he might have broke very advantagiouſly. -------- *Jefferies* depoſed, That Mr. *Tryon* uſed to truſt the Colonel with Jewels of a conſiderable Value, and had a good Opinion of him: But the Witneſſes ſaid, It was generally reported the Colonel lived too high.

It being demanded of Mr. *Turner*, a Companion of the Colonel's, and taken with him, what he had to ſay in his Defence, he anſwered, he was never at Mr. *Tryon*'s in his Life, till he was there with Sir *Thomas Aleyn*.

John Turner, the Colonel's Son, confeſſed he carried two Bags to the Houſe in the Minories, and that he ran away when Sir *Thomas Aleyn* came thither.

The Court direct the Jury.

The Court, in their Directions to the Jury, informed them, That as to *Mary Turner*, the Wife, though ſhe ſeemed to have a Hand in the Buſineſs all along, yet it appearing to be by the Direction of her Husband, ſhe could not be made an Acceſſary. And, as to *Ely Turner*, the Evidence could not affect him, for it appeared that *John* carried the Money, and not *Ely*; and obſerved, that where ſeveral Men came to break open and rob a Houſe, and ſome entered, and others of the Gang ſtood without, to prevent a Surprize, they were all guilty of the Burglary and Robbery: That if the Door was not broke open, but opened by Keys or Pick-locks, it was, nevertheleſs, Burglary. And that, if one of the Thieves came in, in the Day-time, and let the others in, in the Night-time, it was, nevertheleſs, a Burglary in them all. 1663. 15 Car. II.

Then the Jury withdrawing for about an Hour, brought in the Priſoner, Colonel *James Turner*, GUILTY, but the reſt were acquitted. And Sentence of Death being paſſed on the ſaid *James*, he was executed the 21 of *January*, 1663-4, in *Leadenhall-ſtreet* near the End of *Lime-ſtreet*, where Mr. *Tryon*'s Houſe ſtood. James Turner *convicted.* *the reſt acquitted.* James *is executed.*

The Priſoner, before his Execution, confeſſed, that he, with the ſaid *William Turner*, one *White*, a Solicitor, and a Friend of *White*'s, were the four Perſons that committed the Robbery; but that neither his Wife, or Sons, knew any thing of it. And he reſtored to Mr. *Tryon*, the Carkanet of Rubies and Diamonds, that was wanting, before he died. *His Confeſſion.*

What is moſt remarkable in this Proceeding, is, that a Man, who lived in Credit and Reputation in the City, as Colonel *Turner* had done for a conſiderable Time, ſhould deſcend ſo low as to become a Felon and Houſe-breaker, and rob and abuſe his moſt intimate Friend: But, his having lived beyond his Income, and affecting to make a grand Appearance, it ſeems put him upon ſuch infamous Projects to ſupport his Extravagancies, and ſhews how difficult it is for a Man to retain either Honour or Honeſty, when he has waiſted his Fortune in a profuſe Way of living. *Remarks on the Trial of* Turner.

But it may be obſerved further, that *Mary Turner*, and *Ely Turner*, the Son, were indicted as Acceſſaries in the Robbery, for receiving, aiding, and comforting *John Turner*, the Son, and not as acceſſary to the Felony and Burglary of *James Turner*, the Father; for a Woman is not puniſhable for receiving or harbouring her Husband, though ſhe knows him to be a Felon; and it would be hard to proſecute a Son for harbouring his Father, though he knew him to have committed a Robbery. But, in Strictneſs of Law, a Son, who receives and harbours his Father, knowing him to have committed Felony, is acceſſary to the Felony, after the Fact.

The Trial of JOHN TWYNE, *Printer*, for *High-Treaſon*, the 20th and 22d of *February*, 1663-4, 15 Car. II.

1663-4. 15 Car. II.

Twyne's Trial.

The Charge.

THE Indictment charged the Priſoner with compaſſing the Death of the King: And the Overt-Act, laid as an Evidence of it, was, his Printing a Treaſonable Pamphlet, entitled, *A Treatiſe of the Execution of Juſtice, wherein is clearly proved, That the Execution of Juſtice and Judgment, is as well the Peoples as the Magiſtrates Duty; and if the Magiſtrates pervert Judgment, the People are bound by the Law of God to execute Judgment without them, and upon them:* But the treaſonable Paſſages laid in the Indictment, and taken out of the Body of the Book, were ſo ſcandalous, that the Government did not think fit to print them with the reſt of the Trial, which makes it an imperfect Piece.

The Witneſſes produced to prove the Priſoner's printing the Book were, firſt, *John Walker*, his Apprentice, who depoſed, that he (the Witneſs) compoſed (or ſet the preſs for) the firſt four Pages of the Book; and that his Maſter *Twyne*, the Priſoner at the Bar, delivered him the Manuſcript Copy: That he (the *The Evidence.*

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(the Witneſs) alſo compoſed the Title, and Part of the ſecond, third, and fourth Sheets; and his Maſter, he thought, compoſed the reſt, and corrected the Sheets; and was poſitive, that his Maſter worked off ſome of the Sheets.

Mr. L'Eſtrange *was Licenſer of the Preſs.*

That they uſually worked at the Preſs from two in the Morning till five: And that Mr. *L'Eſtrange* came and knocked at the Door while they were at work, and the Deponent looking out at the Window, and telling his Maſter, Mr. *L'Eſtrange* was there, his Maſter anſwered, he was undone: Whereupon he broke the Form (diſperſed the Letters) by his Maſter's Direction.

Mr. *L'Eſtrange* depoſed, that, having Notice of a Preſs that had been at Work ſeveral Nights, in *Cloth-Fair*, he took a Printer and a Conſtable with him, and went to *Twyne*'s Houſe, where he heard them at work; and when he knocked at the Door, they put out the Lights, and made him wait a Quarter of an Hour, before they let him in; but having got a Candle, he went up Stairs, and found a Form broken, only one Corner ſtanding entire, which the Printer that went with him comparing with the Corner of a Page newly printed, they appeared to be the ſame; and at laſt they found the whole Impreſſion, thrown down a Pair of back Stairs: And that *Twyne* told him he had the Copy (the Manuſcript) of Mrs. *Calvert*'s Maid, to whom he alſo delivered the Sheets he had printed; and that ſhe paid him forty Shillings in Part for his Work.

Dickenſon, another Witneſs, who attended Mr. *L'Eſtrange* to *Twyne*'s Houſe, confirmed his Teſtimony, as did *Thomas Mabb*, another Witneſs.

Wickham the King's Meſſenger alſo depoſed, that he attended Mr. *L'Eſtrange* to *Twyne*'s Houſe, and that there were two or three hundred Sheets thrown into the next Houſe wet, newly come off the Preſs; and that when he had the Priſoner in Cuſtody at his Houſe, he owned it was a very bitter Thing, and ſaid, it was his unhappy Fortune to meet with it: There were ſeveral other Witneſſes alſo examined, that corroborated the Evidence of the Former.

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The Priſoner's Defence.

The Priſoner made no other Defence, than by a flat and poſitive Denial of the whole: He ſaid he neither read the Book, or heard it read; nor did he ſet his Men to work upon it, or know the Author or from whence it came.

Then the Lord Chief Juſtice *Hyde* ſummed up the Evidence, and obſerved to the Jury, that there was as much Villany and Slander in this Libel, as could be invented; and that the Deſign of it was, to deſtroy the King's Perſon and Family, to rob him of the Affection of his People, and ſubvert all Government, Eccleſiaſtical and Civil.

The Priſoner convicted and condemned.

That it was one of the blackeſt Treaſons that could be committed, and that the Priſoner's Defence conſiſted only in a bare Denial of the Fact: Whereupon the Jury, after a ſhort Receſs, brought him in GUILTY, and Judgment was pronounced on him as a Traitor.

He is executed.

The Priſoner refuſing to diſcover who was the Author of this Treaſonable Libel, was executed ſome few Days after at *Tyburn*, in purſuance of his Sentence.

Remarks on Twyne's Trial.

Indeed the Printer and Publiſher of Treaſon are as guilty, in the Eye of the Law, as the Author; though it is very rare, that either Printer or Bookſeller ſuffer, where they diſcover who ſet them on work. I have not, I confeſs, ſeen the Libel, the Priſoner was proſecuted for; but the very Title ſeems to be High-Treaſon againſt every Form of Government on the Face of the Earth, declaring it to be the People's Duty to execute Judgment on their Governors, whenever their Adminiſtration is not agreeable to their Notions of Juſtice and Judgment: And no Doubt but it muſt be a virulent Libel, when the Priſoner never attempted to defend one Paſſage in it.

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The Trial of THOMAS BREWSTER, for a Miſdemeanor, the 22d of *February*, 1663-4. 15 Car. II.

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Brewſter's *Trial.*

The Charge.

HE was charged in the Indictment, only with a Miſdemeanor, in Printing a Libel entitled, *The Speeches and Prayers of the late King's Judges*, and ſelling and uttering the ſame: Part of the Words laid in the Indictment being taken out of a Letter, from *Cook* the Regicide to his Friend, a little before his Execution, wherein he ſays, *The Cauſe for which I am in Bonds, is as good as ever it was: And I believe there is not a Saint that hath engaged with us, but will wiſh at the laſt Day, that he had ſealed to the Truth of it with his Blood: I am ſatisfied, it is the moſt Noble and Glorious Cauſe, that has been agitated ſince the Apoſtolical Times; being for Truth, Holineſs, and Righteouſneſs; for our Liberties as Men and as Chriſtians; for removing all Yokes and Oppreſſions: It is ſuch a Cauſe, that the Martyrs would come from Heaven again to ſuffer for it, if they might:* I LOOK UPON IT AS THE MOST HIGH ACT OF JUSTICE (THE MURDER OF THE LATE KING) *that our Story can parallel*, &c.

The Evidence.

Thomas Creek, a Printer, depoſed, that *Brewſter*, the Priſoner, delivered him Part of the Copy of the ſaid Speeches to print, and that he Printed as far as Folio 36: That the firſt Impreſſion was 3000; and he printed Part of a Second, and delivered the Books to ſuch Book-binders as *Brewſter* directed him.

George Threſher depoſed, that *Brewſter*, employed him to fold and ſtitch Part of the Books, and that he delivered them again to *Brewſter*, who paid him for them: And other Witneſſes confirmed the Teſtimony of theſe.

Brewſter's *Defence.*

Brewſter, in his Defence, obſerved, That the Witneſſes did not teſtify that he had publiſhed the Speeches *maliciouſly*, or with any Deſign againſt the Government; and that it was not uſual with Bookſellers to read what they

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they ſold: Selling Books was his Trade; it was only a bare exerciſing his Trade, and he knew no Evil in it: That the Book alſo came out at a Time when there were no Licenſers of the Preſs, no ſettled Rules for their Direction, and he did not think himſelf accountable for what was in it: That it was more than three Years ſince the Book was printed, and it was ſold publickly, not clandeſtinely; and laſtly, he offered to bring Evidence, that he was not a ſeditious or diſaffected Perſon.

The Reply to the Priſoner's Defence.

To this the Court replied, That Malice was always implied where the Act was unlawful: Even where a private Perſon was ſlandered, Malice was implied; much more where the King and State were traduced: That it was alſo done *ſeditiouſly* and *factiouſly*; for what could tend more to Sedition, and to incite and encourage the People to murder their King, than the publiſhing thoſe vile Expreſſions of a Wretch who had murdered his Prince (viz.) *That he rejoyced in his Bonds: And that the Martyrs would willingly come from Heaven to die in ſuch a Cauſe: And that all the Saints that engaged in it would wiſh they had ſealed it with their Blood.* The Drift of the Libel, the Chief Juſtice obſerved, was, to make the King's Subjects believe, that the horrid Murder of his Father was juſtifiable: But he would be bold to affirm, *That ſo horrid a Villany had not been done upon the Face of the Earth, ſince the Crucifying of our Saviour*; and that the Priſoner muſt not think to juſtify all manner of Sedition againſt the King and State, by ſaying that ſelling Books was his Trade: That it was juſtifiable, indeed, for a Counſel to plead for his Client; but if he uttered Sedition, under Pretence of defending his Client, he was puniſhable for it: So if a Bookſeller would print and publiſh ſeditious and factious Books, he muſt ſuffer for it: He might be indicted and puniſhed, for publiſhing a Libel againſt a private Man, or a Magiſtrate; much more, for one againſt the King and State: Nor was it any Excuſe, to ſay, they were the Speeches or Words of dying Men; for if a Man would be as wicked at his Death, as he had been in his Life-time, and juſtify his Villany, the Publiſher of it was puniſhable: So where a Highwayman at the Gallows ſhould arraign the Juſtice of the Law, and the Judges that condemned him, the Publiſher of ſuch Speeches would ſuffer for it: And directed the Jury therefore, that if they found the Defendant had cauſed theſe Speeches to be printed or publiſhed, they ſhould find him guilty of the Miſdemeanor, of which he ſtood indicted; and obſerved, that the Government was very merciful to the Priſoner, that he was not proceeded againſt Capitally.

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A ſecond Indictment of Brewſter.

Brewſter was a ſecond Time indicted for printing and publiſhing a Libel called the *Phœnix*; *or, the Solemn League and Covenant*; in which it was declared, That *a King abuſing his Power to the Overthrow of Religion, Laws, and Liberties, which are the very Fundamentals of this Contract and Covenant, may be controuled and oppoſed: And if he ſet himſelf to overthrow all theſe by Arms, then they who have the Power, as the Eſtates of a Land, may, and ought to reſiſt by Arms; becauſe he doth by that Oppoſition, break the very Bonds, and overthrow the Eſſential of this Contract and Covenant: This may juſtify the Proceedings of this Kingdom, againſt the late King, who, in an hoſtile Way, ſet himſelf to overthrow Religion, Parliaments, Laws, and Liberties; and that the breaking this Covenant, was greater Sin than the breaking a Commandment.*

It was fully proved, that the Priſoner, with ſome other Bookſellers, his Partners, cauſed the ſaid Libel to be printed, ſold, and diſperſed, privately about, three Years before; and it appeared to be taken chiefly out of Mr. *Calamy*'s and Mr. *Douglas*'s Sermons, which were in Print.

His Defence.

Brewſter, in a Manner, confeſſed the Fact; but obſerved in his Defence, that he did but put together, what had been before printed ſeparately with Licence; and brought Witneſſes to prove he was conformable to the Church, and lived peaceably.

The Court direct the Jury.

Then the Chief Juſtice ſummed up the Evidence, and informed the Jury, that the aſſerting People might reſiſt their Prince, and take up Arms againſt him, was direct Treaſon, though the Priſoner was indicted but for a Miſdemeanor: And as for the Libel's being licenſed, it appeared, that Part of it was licenſed at *Edinburgh*, and Part of it here, during the Rebellion; and now to tell the People, after the King was happily returned, that they might do the ſame Thing again, was not to be borne: *Then* Simon Dover *was brought to his Trial.*

1663-4. 15. Car. II.

Dover's Trial.

The Trial of SIMON DOVER, a Printer, for a Miſdemeanor, the 15th of *February* 1663-4. 15 Car. II.

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THE Priſoner deſiring he might have Counſel aſſigned him, and a Copy of his Indictment, it was granted him.

The Charge.

The Indictment charges him with a Miſdemeanor, in Printing, and Publiſhing the ſaid *Speeches and Prayers:* And the Fact being fully proved, the Priſoner did not deny it; but ſaid in his Defence, that there was no Law againſt Printing: That he did it for a Livelihood; and the Scripture ſaid, he was worſe than an Infidel, that did not provide for his Family: If he had trangreſſed, it was through Ignorance, and he was ſorry for it.

The Fact confeſſed; but excuſed.

The Reply.

To this the Chief Juſtice replied, that though every Man ought to maintain his Family, yet he ought not to do it by abuſing the King and Government: That could be no Part of his Trade: A Thief might as well ſay, he ſtole to maintain his Wife and Children.

Brook's Trial.

Then *Nathen Brooks*, a Book-binder, was brought to his Trial, for diſperſing and publiſhing

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liſhing the ſaid Libel, entitled, *The Dying Speeches*, &c. which was fully proved againſt him: And one Jury having been charged with all the three Priſoners, after an Hour's Receſs brought in their Verdict. *(Viz.)*

Brewſter *convicted on both Indictments.*

That *Brewſter* was guilty of ſelling and writing the Libel entitled, *The Dying Speeches*, &c.

That *Brewſter* was alſo guilty of publiſhing the Libel entitled, *The Phœnix*; *or, the Solemn League and Covenant.*

Dover *convicted.*

That *Dover* was guilty of printing and publiſhing that Libel entitled, *The Speeches, &c.*

Brooks *convicted.*

And that *Nathen Brooks* alſo was guilty of ſelling the ſaid Speeches.

The Judgment paſſed on all three.

Whereupon *Brewſter* was ſentenced to pay a Fine of an hundred Marks, and to ſtand in the Pillory.

Brooks and *Dover*, were each of them ſentenced to pay a Fine of Forty Marks, to be ſet two ſeveral Days in the Pillory, and to be committed, without Bail, till the next Seſſions, when and where they ſhould all make an open Confeſſion of their Offences, in ſuch Words as ſhould be preſcribed by Authority, and afterwards be impriſoned, during the King's Pleaſure; and on their Diſcharge, ſhould enter into Recognizances of 400 Pound each, with two Sureties in 200 Pound each, not to print or publiſh any unlicenſed Books.

It appears from theſe three laſt Trials, that it will not avail a Printer or Bookſeller, who prints or publiſhes a Libel, to ſay, he did not know what was in it; or that he did but exerciſe his Trade without any Malice or ill Deſign againſt the Government: But ſtill, where a Man appears to be well-affected to the Government, and that it was a meer Overſight, he is ſeldom dealt with rigorouſly; eſpecially if he declares who was his Author.

1663-4. 14 Car. II.

Remarks on the Trials of Brewſter, the Bookſeller, &c.

We may obſerve from hence alſo, that it is in the Power of the Proſecutor, to call the Offence what he pleaſes: Though the Fact be really an Overt-Act of High-Treaſon, he may charge the Priſoner only with a Miſdeameanor; nor can the Jury find it to be any Thing elſe, though the Treaſon be never ſo evident: On the other Hand, where the Priſoner is charged with High-Treaſon, and it appears upon the Evidence, that the Offence amounts to no more than a Miſdeameanor, the Jury muſt acquit the Priſoner, and cannot find him guilty either of Treaſon or Miſdeameanor: It appears alſo, that in a Trial for a Miſdeameanor, a Man might have had Counſel formerly, but not where he was charged with High-Treaſon; though at this Day, by a late Act, he may have Counſel in Treaſon: However in Murder, and other Capital Offences, he is ſtill denied Council; unleſs where Matter of Law ariſes on the Frame of the Indictment, or on the Facts that are given in Evidence.

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Keach *his Trial.*

The Trial of BENJAMIN KNACH, for a *Miſdemeanor*, at the Aſſizes for the County of *Bucks*, held at *Alesbury*, the 8th and 9th of *October*, 1664. 16 *Car.* II.

1664. 16 Car. II.

The Charge.

THE Indictment charges, that the ſaid *Keach*, being a Seditious, Heretical, and Schiſmatical Perſon, did write, print, and publiſh a ſeditious Book, or Libel, entitled, *The Child's Inſtructor*; *or a new and eaſy Primmer*. Wherein were ſeveral damnable Poſitions, contrary to the Doctrine and Liturgy of the Church of *England:* And ſeveral Paſſages of the Libel were recited, wherein he aſſerted, *That* Chriſt *ſhould reign upon Earth a thouſand Years*; cenſured Infant Baptiſm, *&c.*

Confeſſed.

It was not only proved by Witneſſes, but the Priſoner confeſſed his writing and diſperſing the ſaid Book: But the Jury obſerving, that one of the Paſſages in the Indictment did not agree with the Book, they were directed to find him guilty of all but that Clauſe; and they found him guilty accordingly.

His Sentence.

After which he was ſentenced to ſtand twice in the Pillory, to pay a Fine of twenty Pounds, to find Sureties for his good Behaviour and Appearance at the next Aſſizes; where he was to renounce his Errors, and make his Submiſſion; and the Book was ordered to be burnt by the Hangman. But after the reſt of the Sentence was executed upon him, he was ſet at Liberty, without making a Recantation.

A Remark upon it.

From this Proceeding, it ſeems, the publiſhing heretical Doctrines, contrary to thoſe of the eſtabliſhed Church, was puniſhable in the Courts of common Law formerly: But the Act of Toleration put an End to ſuch Proſecutions.

With this Proceeding ended the firſt Volume of State Trials. Firſt Edition.

The

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Lord Morley, his Trial.

The Trial of THOMAS Lord MORLEY, for *Murder*, in *Weſtminſter-Hall*, before EDWARD Earl of *Clarendon*, Lord Chancellor of *England*, Lord High Steward *(pro hac vice)*; JOHN Lord ROBERTS, Keeper of the Privy-Seal, EDWARD Earl of *Mancheſter* Lord *Chamberlain*; HENRY Lord ARLINGTON, Principal Secretary of State; the Earls of *Oxford*, *Bedford*, *Suffolk*, *Dorſet*, and twenty other Peers, the 30th of *April*, 1666. 18 *Car.* II.

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Reſolutions of the Judges, previous to the Trial.

ALL the Judges of *England*, met at Serjeant's-Inn, in *Fleet-ſtreet*, on the 28th of *April*, to conſider of ſuch Things, as might, in point of Law ariſe at the Trial of the Lord *Morley*; and unanimouſly reſolved, 1. That, upon a Letter of the Lord High Steward, directed to them, they were to attend at the Trial, in their ſcarlet Robes, and the chief Judges in their Collars of *SS*.

2. That in Caſe the Peers, who are Triers, after Evidence given, and the Priſoner withdrawn, and they were retired to conſult of their Verdict, ſhould deſire to ſpeak with any of the Judges, to have their Opinion upon any Point of Law: Then, if the Lord Steward directed ſuch Judges to go, they ſhould go to the Lords: But they ſhould acquaint the Lords, that they were not to deliver any private Opinion, without Conference with the reſt of the Judges, and that only in open Court.

3. That, if the Lord Steward ſhould, in open Court, demand any of their Opinions, though in the Abſence of the Priſoner, they were to anſwer the Queſtion.

4. That, if any of the Witneſſes, which were examined before the Coroner, were dead, or unable to travel, and Oath made thereof, the Examinations of ſuch Witneſſes might be read, the Coroner making Oath, that ſuch Examinations were the ſame which he took, without Addition or Alteration.

5. That, in Caſe any Witneſs, who had been examined by the Coroner, was detained from appearing, by the Means or Procurement of the Priſoner, his Examination might be read.

6. That if a Witneſs, examined by the Coroner, was abſent, and Oath made that the Proſecutors had uſed all their Endeavours to find him, and he could not be found; this was not ſufficient to authorize the reading of ſuch Examination.

7. That no Words were, in Law, ſuch a Provocation as would leſſen the Offence of killing a Man, and reduce it from Murder to Man-ſlaughter: But if, upon ill Words both Parties ſuddenly fight, and one kill the other, this is but Man-ſlaughter; for it is a Combat betwixt two, upon a ſudden Heat, which is the legal Deſcription of Man-ſlaughter.

8. If, upon Words, two Men grow angry, and afterwards ſuppreſs their Anger, and fall into other Diſcourſe, or have other Diverſions for ſuch a Space of Time, as in reaſonable Intendment their Heat might be cooled; and ſome Time after they draw upon one another, and fight, and one is killed; This is Murder: Becauſe, being attended with ſuch Circumſtances, it is reaſonably ſuppoſed to be a deliberate Act, and a premediated Revenge upon the firſt Quarrel; but the Circumſtances being Matters of Fact, the Jury are Judges of them.

Neither the Charge or Evidence given by the Editors of this Trial.

The Editors of this Trial have neither given us the Indictment, or Evidence, or the Defence the Priſoner made; but it ſeems to have been a common Indictment, for the Murder of Mr. *Haſtings*: They tell us only that one Witneſs depoſed, there was a former Grudge, and that another ſwore when the Lord *Morley*, the Priſoner, had run Mr. *Haſtings* through the Head, his Lordſhip ſaid, *God damn me, I promiſed thee this, and now I have given it thee.* And that the Quarrel began at the *Fleece*-Tavern, about an half Crown the Lord *Morley* ſaid he had laid down.

The Evidence ſummed up by the Solicitor-General, with his Obſervations upon it.

We learn more of the Circumſtances of this Caſe, from a Speech aſcribed to Sir *Hencage Finch*, the Solicitor General, than from any Thing elſe. This Gentleman, in ſumming up the Evidence for the King, obſerved, that there were but three Caſes in Law, which were capable of excuſing the Death of a Man. 1. When a Man kills another in his own Defence: 2. When he does it by Miſadventure, or mere Accident. And, 3. When he does it in Heat of Paſſion. The two firſt of theſe excuſe *a toto*, and are not ſo much as Felony: The laſt, *a tanto:* It is Felony, but within Clergy. But by the ancient Law, whoever killed a Man by the moſt caſual Misfortune in the World, muſt have died for it as a Murderer. And, even now, he that kills a Man, *ſe defendendo*, muſt not plead that he did it in his own Defence, but he muſt plead *Not Guilty*; It being a Maxim in Law, that the Death of a Man cannot be juſtified. Nay, the Jury cannot find him to be *ſe defendendo*, but they muſt find the ſpecial Fact, and leave it to the Court, to find whether it were *ſe defendendo*, on the Circumſtances. For, if the Fact be ſo, That the Man did not fly to the Wall, or his laſt Refuge, before he gave the mortal Wound, he is a Felon ſtill. And, he that kills a Man by Accident, or Miſadventure, muſt take Care the Action he was about, was abſolutely lawful and neceſſary; for if there were an unneceſſary medling with edge-Tools or Fire-Arms; if there were unneceſſary Recreation in the Act which produced this Event, he is reſponſible to the Law for the utmoſt Conſequence. And, at this Day, if a Man that kills another in the City, eſcapes out of the City, the City is to be amerced for letting a notorious Malefactor eſcape.

If a Man meet another in the Street, and kill him without any viſible Provocation, the Law ſuppoſes there was Malice precedent, and judges this Act, Murder. And as it is Murder to kill a Man without Provocation, ſo is it, if the Provocation be ſlight and trivial.

A Caſe was tried before the Lord Chief Juſtice *Popham*, wherein it appeared, that a

Kentiſh

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Kentiſh Gentleman, paſſing by another, made wry Mouths, and laughed, whereupon the other fell upon him, and killed him. The Chief Juſtice therefore and his Brethren were of Opinion, this was Murder, and the Man was hanged, this not being a competent Provocation. But, admitting the Provocation be great, yet if the Man be not killed in the heat of Paſſion; if there be any Interval of Time, that the Law ſuppoſes the Blood might, and ought to have been cooled, and the Perſon then falls upon him that gave the Provocation; that which was Paſſion at firſt, is Malice at laſt; and that which would have been Man-ſlaughter then, is Murder now.

To come to the Point: There appears to be ſo little Provocation in this Caſe, that the poor Gentleman that was murdered, offered any Man five Pounds to tell him what the Quarrel was. His Lordſhip, indeed, ſays in his Defence, he hopes his Peers will conſider, that there was no other Provocation than the half Crown. I am ſorry for it: I am ſure the Laws of *England* allow no Man to take away another's Life, for half a Crown, without being guilty of Murder. Mr. *Haſtings* hears my Lord quarrel about half a Crown, and ſays, *I wonder a Perſon of Honour ſhould make ſuch ado about an half Crown*; and then throws down four half Crowns upon the Table, to make Satisfaction: Preſently Swords are drawn: Mr. *Bromidge* draws firſt, and hectors for my Lord. Then they are put up again; there is one Interval, and Time for Recollection. My Lord proceeds to quarrel with Mr. *Haſtings*, and calls his Sins to Remembrance, and knowing that Mr. *Haſtings* had been guilty of killing a Man not long before, tells him, *We come not here to ſtab Folks*. Mr. *Haſtings*, piqued to ſee himſelf ſo openly reproached, anſwered, he was a Gentleman, and as good a Gentleman as my Lord. I beſeech your Lordſhips to obſerve how Mr. *Haſtings* was treated: He was four Times drawn upon, twice by *Bromidge* in the Houſe, then in the Street; and a fourth Time under the Arch in *Lincoln's-Inn-Fields*. Mr. *Haſtings* ſays, I have no Quarrel to you, Captain: If there be any, it muſt be diſputed between me and my Lord. Some Witneſſes indeed, have been produced by my Lord *Morley?* (not upon Oath) who ſay, that Mr. *Haſtings* preſſed my Lord to fight, and ſaw him draw and attack, with the Three on the other Side. *Street* depoſed, that Mr. *Haſtings* reſolved to fight my Lord; and another depoſed, that my Lord ſaid, he would not fight; but this is not at all probable. It is plain, Mr. *Haſtings* ſaid, he would give any Man five Pounds, that would tell him, what the Quarrel was: And why ſhould he, that knew of no Quarrel, deſire the Blood of my Lord *Morley?* Compare this with the Witneſſes that ſwear for the King; all three of whom expreſly ſay, they ſaw the Fight, and the Beginning of it, though it cannot properly be called a Fight. It was a direct Aſſaſſination; for three of the Witneſſes ſwore, there were two upon *Haſtings* all the while. Mr. *Haſtings* being thus preſſed, ſteps back, to get a little Ground; then my Lord takes him at the Advantage, ſhortens his Sword, and runs him into the Head; for which, as there was no Provocation, Malice was by Law implied, and it was Murder in his Lordſhip.

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Nor was there only Malice implied by Law, but Malice apparent confeſſed, and moſt evident; for, as ſoon as Mr. *Haſtings* was killed, my Lord *Morley*, with a moſt deſperate Imprecation, throws his Sword upon him, ſaying, *God damn me, there you lie.* Another Witneſs ſwares his Lordſhip ſaid, *I have promiſed it you, and now you have it.* Can your Lordſhips doubt now, whether my Lord killed Mr. *Haſtings* with a deliberate Hatred? You ſee he confeſſed it was in Diſcharge of his Promiſe; and my Lord is to be believed againſt himſelf. The Brother of Mr. *Haſtings* ſays, the Deceaſed told him, that he had the unhappineſs to have a quarrel with my Lord almoſt ten Years before; and that, fighting with my Lord, he had the Misfortune to give him a Hurt. The Brother ſwears further, that my Lord *Morley* coming by, and the Deceaſed paying his Lordſhip due Reſpect, his Lordſhip received it with ſuch Contempt, that the Deceaſed ſaid he knew not what it meant; *I doubt he bears me a Grudge.* This was a Year and half before his Death; but within a quarter of a Year before, the Witneſſes depoſe, That the Deceaſed, his Father, Brother, and my Lord, being at an Alehouſe, the Brother went down Stairs, and when he came up again, he found my Lord with his Sword drawn; and the Brother ſwears that the Deceaſed then told him, that my Lord was always urging him to drink, and then ſought all Occaſions he could to give and take Offence. Thus, it ſeems, it was his Lordſhip's Cuſtom to urge Mr. *Haſtings*, and to give him frequent Provocations, as if he had ſought an Occaſion for Man-ſlaughter, and to kill him within the Protection of the Law.

I confeſs, an Affront offered to a Peer, is much more heinous than one offered to a private Gentleman; but then the Law has provided another Manner of Reparation for a Peer. The ſame Words that, being ſpoken of a Gentleman, will bear no kind of Action, when ſpoken of a Peer, become *Scandalum Magnatum*. The Peer recovers great Damages, and the King inflicts a Fine and Impriſonment; ſo that upon the Matter, the Offender is bound in Chains, and laid at my Lord's Feet. Now for his Lordſhip, whoſe Honour is thus guarded by Law to avenge himſelf by his Sword, is moſt unpardonable. I do not preſume to ſay, that the killing of a Man is more capital in the Caſe of a Peer, than of a private Gentleman; but I affirm, that no Provocation in the World can make that to be but Man-ſlaughter in a Peer, which would be Murder in a Gentleman. The Quality of the Offender, may ſerve to inhance the Crime; but, ſince the World ſtood, it was never counted a Diminution of it, or an Apology for committing it. The ſame Duty to the King, the ſame Obedience to the Laws, the ſame Reverence for human Nature, the ſame Caution to avoid the Effuſion of Chriſtian Blood, is expected from a Lord, as from the meaneſt Commoner in *England*.

It

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It is the Caſe of all the People of *England*, who are highly concerned in the preſent Example: If they put their Truſt in the Law, as the greateſt Avenger of Blood in the World, and once find themſelves deceived, who knows what Conſequences may follow? What Feuds in Families; what Maſſacres it may produce? No doubt, but all the World will obſerve and mark the Iſſue of this Day; they will be curious to know what became of a Lord, in whoſe Eyes the Blood of a Gentleman was ſo vile and inconſiderable. If it were poſſible ſo great a Tribunal as this could either miſtake the Fact, or miſunderſtand the Law, what Judicature is there left on this Side Heaven, for Mankind to rely on? In this Place no Deteſtation of the Crime; no Paſſion of the Proſecutor; no Compaſſion of your Lordſhips towards a Peer of the Realm, is to have any Ingredient in the Verdict: And therefore, having obſerved to your Lordſhips, that there is Malice implied by the Law, and in a Manner confeſſed by the Party, beſides the direct and formal Malice which hath been proved, I now ſubmit all to the Judgment which the Law hath wiſely placed in your Lordſhips moſt noble Breaſts, with this only Obſervation; That it is the Voice of Blood that crieth; And I know your Lordſhips will give it ſuch an Audience as it ought to have; ſuch an Audience as may quiet it, and keep it from crying any more; ſuch an Audience as may cleanſe the Land from Blood, and be a Means to continue that due Veneration, which all Men have to your Lordſhips moſt righteous and impartial Proceedings.

The Solicitor-General having finiſhed his Speech, the Lord Steward directed the Lords Triers to withdraw, and conſider of the Evidence; but did not ſum it up.

The Lords and the Priſoner being withdrawn, Wine and Biskets were brought in for the Lord Steward, and the great Men preſent; and the Lords Triers having ſtaid out about three Hours, returned into Court, and took their Places; and being called over, the Lord High Steward, demanded of my Lord *Frecheville*, (the loweſt of the Peers) *If my Lord* Morley *was Guilty, or not Guilty?* To which his Lordſhip anſwered (laying his Hand on his Breaſt) *Not guilty of Murder*; *but guilty of Manſlaughter.*

The Priſoner convicted of Manſlaughter.

In the ſame Manner the Lord-Steward putting the like Queſtion to the reſt, ſeverally, in their Order, they all returned the ſame Anſwer, except the Lord *Wharton* and Lord *Aſhley*, who anſwered, *Guilty of Murder.*

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Then the Lord *Morley*, the Priſoner, being brought in, the Lord Steward acquainted him, that his Peers had found him *Guilty of Manſlaughter*, and demanded what he had to ſay for himſelf: To which his Lordſhip anſwered, He deſired the Benefit of his Clergy, and the Benefit of the Statute; and the Lord Steward replied, He muſt have the Benefit of his Clergy; he conceived the Statute was clear in that Point; and asking the Opinion of the Judges, they all bowed, as a Mark of their Aſſent. Then the Lord Steward told the Priſoner, he was diſcharged, paying his Fees. After which the Court was diſmiſſed, and the Lord Steward broke his Staff.

Has the Benefit of the Statute.

Remarks on Lord Morley's *Trial.*

Since the Editor hath omitted the Charge, the Evidence, and Defence, it is impoſſible to make any juſt Remarks on this Trial. Indeed, if we are to relie on the Obſervations made by the Solicitor-General, the Malice was pretty notorious: For it ſeems this Lord and Mr. *Haſtings*, had fought a Duel ten Years before, and his Lordſhip was then wounded by him. Several other Quarrels had happened between them afterwards, and his Lordſhip had threatened the Deceaſed: And, as I apprehend the Caſe, this was a Duel of Four of a Side, who agreed to go from the Tavern where the Quarrel began, and fight in the Fields. And the Solicitor informs us, that the Witneſſes depoſed, That my Lord and another fell upon *Haſtings* at once; and his Lordſhip ſhortned his Sword, and run the Deceaſed through the Head, ſaying, *God damn me, I have promiſed it you, and now you have it*; which, one would think, ſufficiently diſcovered the Malice of his Heart; and, had he been tried by a common Jury, would have gone a great Way to have convicted the Priſoner of Murder. But whether there might not be ſomething in that Suggeſtion of the Solicitor's, That Peers, being a ſuperior Claſs of Men, are apt to imagine that nothing leſs than the Blood of the Offender can attone for an Affront given them by a private Gentleman, may require ſome Conſideration.

I ſhall only obſerve further, that the Editor is miſtaken in the Title of this Trial, where he makes it to be before *The Houſe of Lords*: Whereas it was before a certain Number of Lords ſpecially appointed for this Purpoſe.

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Proceedings on the Impeachment of EDWARD Earl of *Clarendon*, late Lord High-Chancellor of *England*, 1667. 19 *Car.* II.

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Lord Clarendon's *Impeachment.*

THE Earl being charged with ſeveral Crimes by Mr. *Edward Seymour*, in the Houſe of Commons, the 26th of *October*, 1667. It was debated, whether they ſhould impeach the Earl of High-Treaſon, in General Terms, or exhibit Articles againſt him: And a Committee being appointed to ſearch Precedents, Sir *Thomas Littleton* reported, That in capital Caſes, there was no Inſtance of a General Impeachment, till the Earl of *Strafford*'s and Archbiſhop *Laud*'s Impeachments.

A Debate on the Manner of it.

Then a Committee was appointed to reduce the Accuſation under certain Heads; which being reported, and read a ſecond Time, it was moved, That it might be referred to a Committee, to ſee how far they were true, common Fame being too ſlender a Ground to form an Impeachment upon: But this was reſolved in the Negative; and the ſeveral Heads

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for Articles were read again, to ſee if thoſe Members that introduced them, could offer ſufficient Reaſons to induce the Houſe to impeach the Earl: And, after the Articles were thus gone through, Sir *Robert Atkyns* obſerved, That the Inducements for their Belief, proceeded from a third Hand; and Mr. *Colman* ſhewed, That even in the Earl of *Strafford*'s Caſe, the Houſe would not proceed on any Article, till one Member ſpoke of his own Knowledge, and another engaged to make it good. However, the Queſtion being put, That the Houſe had ſufficient Inducements to impeach the Earl, it was carried in the Affirmative.

The Heads for an Impeachment.

The principal Part of the Charge againſt the Earl, was, that he had adviſed the King to lay aſide Parliaments, and govern arbitrarily by a Military Power: That he had got a greater Eſtate, under the Crown, than could be lawfully gained in ſo ſhort a Time: That he had been guilty of Bribery and Corruption: That he had adviſed and effected the Sale of *Dunkirk:* That he had correſponded with *Cromwell*, and the King's Enemies, when he was beyond Sea: That he had betrayed the Nation in all Negotiations relating to the *Dutch* War; and betrayed and diſcovered his Majeſty's ſecret Councils to his Enemies; and that he was the Author of that fatal Council of dividing the Fleet in the Year 1666: And they reſolved, that the betraying his Majeſty's Councils to his Enemies, was High-Treaſon; and therefore determined to impeach him of High-Treaſon. Accordingly, on the 12th of *November*, Mr. *Edward Seymour* impeached the Earl of High-Treaſon, and other Crimes and Miſdemeanors, at the Bar of the Houſe of Lords, in general Terms, deſiring he might be ſequeſtred from Parliament, and committed to ſafe Cuſtody, and in convenient Time the Commons would exhibit Articles againſt him: But the Lords declared, at a Conference with the Commons, they had not committed the Earl of *Clarendon*, becauſe their Accuſation for High-Treaſon, was in General Terms.

Impeached of High-Treaſon generally.

A Debate between two Houſes concerning committing the Earl.

The Commons, on the other Hand gave their Reaſons at a ſecond Conference, why a Peer ought to be committed on a general Impeachment; with which, the Lords, however, were not ſatisfied: But while the two Houſes were diſputing this Point, the Lords received an Intimation, that the Earl was withdrawn; together with a Petition from his Lordſhip, directed to the Lords Spiritual and Temporal, which That Houſe on the 3d of *December*, communicated to the Commons; and in this he anſwers, Part of the Charge he found the lower Houſe was framing againſt him, and ſays, If his Eſtate had been anſwerable to what was reported, it might reaſonably have cauſed his Integrity to be ſuſpected; but that he had never received or taken a Penny, but what had been the lawful Perquiſites of his Office, in the beſt Times; and that it had been worth double to others, what it had been to him: That all the Favours he had obtained from the King for others had not been worth five Pounds to him; ſo that he was as far from Corruption as from a diſloyal Thought, which after thirty Years Service of the Crown, in ſome Difficulties and Diſtreſſes, he never expected would have been objected to him in his Age: That what his Majeſty had beſtowed on him in Lands, was worth more than all he had beſides; and, though this exceeded his Merit, yet others had been as fortunate in the like Bounty, who had as ſmall Pretences to it.

The Earl with draws, and leaves a Petition to the Lords behind him

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And as to the attributing all Misfortunes and Miſcarriages to his Councils, as he was Prime Miniſter: He ſaid he ſerved a Maſter of great Underſtanding, who always joined other Perſons with him of great Ability and Experience, without whoſe Advice and Concurrence nothing was done.

That, for two Years after the Reſtoration, there was no Difference in the Councils, or any Complaints in the Kingdom; but from the Time Mr. Secretary *Nicholas* was removed (and ------ *Bennet*, *Earl* of *Arlington*, *ſucceeded)* there had been great Alterations: The Petitioner's Credit at Court, and in the Council, had been much diminiſhed, ſince that Time; not above two Perſons having been brought into the Council, or preferred at Court, who could be ſuſpected of having any Kindneſs for him; and moſt of them of different Principles, both in Church and State, and who had taken all Opportunities of leſſening the Petitioner's Credit with the King, and others, by miſrepreſenting all he ſaid and did; though his Majeſty's Juſtice and Goodneſs was ſuch, that it made little Impreſſion on him.

That it was his Opinion, the Misfortunes of the Kingdom proceeded from the *Dutch* War, to which he was always averſe; no Alliances being formed, at the Commencement of it, with the neighbouring Princes: That after we entred into War with the *Hollander*, neither *France* or *Spain* had much Regard for us; and as he abhorred the entring into it, ſo he never gave any Advice towards the Management of it; ſave that he oppoſed the Payment of the Seamen by Tickets, and ſome other Particulars, that added to the Expence.

That he was not conſcious of having given Advice that had proved miſchievous or inconvenient to his Majeſty, or had been the ſole Manager of Affairs; for he had not been twice alone with his Majeſty the laſt Year; and very ſeldom, the three preceding Years; and very few things had of late been hearkened to that he had propoſed.

That ſince the Diſtempers of the Times, and the Differences between the two Houſes were ſo great, and his Enemies had given out, that he would prevail with his Majeſty to diſſolve the Parliament, thereby to expoſe him to the Rage and Fury of the People; that he might not be looked upon to obſtruct his Majeſty's Service, or the Unity and Peace of the Kingdom, he humbly beſought their Lordſhips that he might not forfeit their Favour and Protection, by withdrawing himſelf from ſo powerful a Perſecution, in Hopes that he might be able hereafter to appear and make his Defence; when his Majeſty's Juſtice ſhould not be obſtructed by the Power and Malice of thoſe who had ſworn his Deſtruction.

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The Commons propose a Bill of Attainder.

An Act passed for his Baniſhment.

This Petition being read in the Houſe of Commons, they reſolved it to be Scandalous and Seditious, and a Reproach to the King, and the publick Juſtice of the Nation; and it was propoſed to bring in a Bill of Attainder againſt the Earl: But the Lords ſending them down a Bill for his Baniſhment, on the 13th of *December*, after ſome warm Debates, they reſolved to be contented with that; Yea's 65, No's 42.

The Earl proſecuted by the Earl of Briſtol.

We meet with another Proſecution of the Earl of *Clarendon* in the State Trials alſo, ſome Years before, *viz. Anno* 1663, when the Earl of *Briſtol* preferred Articles of High-Treaſon againſt him in the Houſe of Peers; the moſt material whereof were, That the Earl of *Clarendon* had traiterouſly endeavoured to alienate the Hearts of his Majeſty's Subjects from him, by giving out, his Majeſty was enclined to Popery, and intended to alter the eſtabliſhed Religion.

That he had perſuaded his Majeſty, contrary to the Intereſt of the Nation, and againſt the Advice of the General, to withdraw the *Engliſh* Garriſons out of *Scotland*, and demoliſh the Forts built there at a vaſt Expence to this Kingdom; and that he had alſo adviſed and effected the Sale of *Dunkirk*: But the Lords having demanded the Opinions of the Judges, whether this Charge was legally brought before their Houſe, and whether there was any Treaſon contained in it;

Reſolved that one Peer could not impeach another.

The Judges unanimouſly agreed, that a Charge of High-Treaſon could not, according to the Laws of this Realm, be exhibited by one Peer againſt another, in the Houſe of Peers; and that, admitting the Matters alledged in the Charge by the Earl of *Briſtol* were true, and though they were alledged to be traiterouſly done, there was no Treaſon in them; and the Lords concurring with the Judges in their Opinion, that Proſecution was dropped.

Remarks on the Earl of Clarendon's *Diſgrace.*

The Earl's Friends generally aſcribe his Diſgrace to his Zeal for the Church of *England*, in Oppoſition both to Papiſts and Diſſenters; and it is obſervable, that he ſays in his Apology, he had little Intereſt at Court, ſince Secretary *Nicholas* was diſcharged (and *Bennet* Earl of *Arlington* ſucceeded him;) That is, ſince the Papiſts influenced the Court, and joined their Intereſts with the Diſſenters to obtain a Toleration: They acknowledge alſo that many of the Cavaliers, who had been ruined in the late Rebellion, were become his Enemies, becauſe he neglected to make a ſuitable Proviſion for them, after the Reſtoration: His very grave and ſolemn Behaviour, rendered him diſagreeable alſo to the gay Part of the Court; for it is ſaid, he did not only reprove his Equals, when he thought they deſerved it, but ſometimes offered his Advice to the King, in ſuch a Manner, that the Wits about the Court would frequently ſay to his Majeſty, as the Chancellor paſſed by, *There goes your Schoolmaſter*: And the Duke of *Bucks*, it is ſaid, would mimick the Chancellor, carrying a Pair of Bellows before him for the Purſe, while Colonel *Titus*, carried the Fireſhovel as a Mace; and the King would laugh at the Buffoonery. Theſe, with the more ſerious Applications of the Popiſh Party, and the Solicitations of the Ladies of Pleaſure, who dreaded his grave Lectures, were, in the Opinion of his Friends, the principal Occaſions of the Chancellor's Diſgrace.

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But ſtill, it is thought, there was ſomething more than the Drollery of the Duke of *Bucks*, the Malice of the Papiſts and Diſſenters, or the Solicitations of the Ladies, to accompliſh this Great Man's Ruin: Particularly he is charged with neglecting, or rather preventing, the Settling a greater Revenue on the Crown at the Reſtoration, when the People were ready to grant whatever the King could demand: This, it is ſaid made his Majeſty very cool, towards him, when he came to feel the ill Effects of it: Neither was his Suffering the Vintners to build him a fine Palace, when the Nation was labouring under thoſe terrible Calamities of Fire, War, and Peſtilence; and ſcarce a Family of Diſtinction, but was mourning the Death of ſome near Relation, agreeable to the Prudence which this Miniſter was ſaid to be ſo eminent for; eſpecially ſince it was ſuggeſted to be built in Conſideration of his Conſenting to the Monopoly of Wines: But whatever was the Occaſion of his Fall, one would have thought his paſſed Services, and his Alliance with the Royal Family, ſhould have procured him a milder Fate; and it is reaſonable to believe, that if the Duke of *York*, his Son-in-Law, had not had ſome Ends to ſerve in his Baniſhment, he might have ſupported him: Perhaps the Duke found him too good a Proteſtant, and might look upon him as an Obſtacle to his Deſign of introducing Popery; and particularly, that he hindred his Dutcheſs from being reconciled to the Church of *Rome*: And if both the King and the Duke had their private Views in ſending him on the other Side the Water; if the one thought the Diſtreſſes of the Crown proceeded from his Advice, and propoſed the enjoying a more unreſtrained Liberty in his Abſence; and the other hoped it would facilitate the Introducing his Religion, we need look no farther for Reaſons for the Baniſhment of the Earl.

But perhaps both the King, and the Duke, and the Nation in general, were in the End greater Sufferers by the Earl's Baniſhment, than himſelf: While he enjoyed an elegant Retirement, at *Rouen* in *France*, and wrote that admirable *Hiſtory of the Civil Wars*, the Court was reduced to the greateſt Diſtreſs, and the People, by the Artifices of deſigning Men, almoſt worked up into another Rebellion, occaſioned chiefly by the Weakneſs, or Wickedneſs, of thoſe Miniſters that ſucceeded the Earl. However defective his Adminiſtration had been, it is certain, his Majeſty changed much for the worſe; and poſſibly, had the Earl continued ſtill at Court, a great deal of that Diſtraction might have been prevented that happened afterwards. We had not been frighted out of our Senſes by a pretended Popiſh Plot: There might have been no Struggles for a Bill of Excluſion: He might, by his Wiſdom and long Experience, have found a Way to have ſecured our Religious and

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and civil Rights, without breaking into the Line of Succeſſion, and driving the Succeſſor into a ſecond Exile: However the Duke might encourage or rejoice therefore, at the Baniſhment of the Earl, his Father-in-Law, had he been governed by his Councils, he might never have been driven from his Throne: But this is not the firſt Time that Families have ruined themſelves, by deſtroying thoſe Relations, who were beſt enclined, and beſt qualified, to ſupport them.

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1668. 20 Car. II.

Trial of Meſſenger, *&c.*

The Trials of PETER MESSENGER, RICHARD BEASLEY, WILLIAM GREEN, THOMAS APPLE-TREE, EDWARD COTTON, JOHN EARLS, WILLIAM WILKS, RICHARD FARREL, WILLIAM FORD, EDWARD BEDLE, RICHARD LATIMER, THOMAS LIMERICK, RICHARD WOODWARD, JOHN RICHARDSON, and JOHN SHARPLESS, for *High-Treaſon*, at the *Old-Bailey*, the 4th of *April*, 1668. 20 *Car.* II.

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The Charge.

THEY were indicted for High-Treaſon, in levying War againſt the King, by aſſembling with other Perſons, to the Number of 500, in *Eaſt-Smithfield*, and *Moor-Fields*, in the County of *Middleſex*, armed with divers Weapons, offenſive and defenſive pulling down Bawdy Houſes, breaking open Priſons, *&c.*

Four Indictments.

There were four Indictments preferred againſt the Priſoners. The Firſt, againſt *Peter Meſſenger*, *Richard Beaſley*, *William Green*, and *Thomas Appletree*. A Second, againſt *Edward Cotton*, *John Earl*, *William Wilks*, *Richard Farrel*, and *William Ford*. A Third, againſt *Edward Bedle*, and *Richard Latimer*. And a Fourth, againſt *T. Limerick*, *John Richardſon*, *Rd. Woodward*, and *John Sharpleſs*.

The Evidence on the Firſt.

The Witneſſes againſt *Meſſenger* and thoſe in the firſt Indictment, depoſed, that on the 24th of *March* laſt, a great Number of Perſons aſſembled in *Eaſt-Smithfield* and *Moor-Fields*, on Pretence of pulling down Bawdy-Houſes: That *Beaſley* marched before them as their Captain, with a naked Sword in his Hand, which he brandiſhed over his head; and that *Meſſenger* had a green Apron upon a Staff, which he flouriſhed as Colours: That the next Day, the 25th of *March*, they did the like: That ſome Houſes were pulled down, and *Peverell* the Conſtable, coming with his Staff in his Hand, charged them to depart, and keep the Peace; and that thereupon *Beaſley* wounded him with his Sword, and ſome of the Mob knocked him down, and took away his Conſtable's Staff: That *William Green* was amongſt them with his Staff in his Hand, and threw up his Hat and hollooed, and was taken by the King's Soldiers, who came to ſuppreſs them: That *Appletree* was amongſt them, and ſtruck firſt at *Peverell* the Conſtable, and aſſiſted in pulling down ſome Houſes.

The Evidence on the 2d Indictment.

The Witneſſes depoſed againſt *Cotton*, and the reſt of the Priſoners, mentioned in the 2d Indictment, That the People being aſſembled in great Numbers, Sir *Phillip Howard* came with a Troop of the King's Guards, and commanded them to diſperſe; and that, ſuppoſing it had been the Duke of *York* that commanded the Guards, they threw Stones at him; and ſome ſaid, unleſs the King gave them Liberty of Conſcience, it ſhould be a bloody *May*-Day: Others ſaid, they would kill the Guards, and pull down *Whitehall*; and continued together in a tumultuous Manner, till they were diſperſed by the Guards.

That the Priſoners were amongſt them both Days; and that *Cotton* aſſiſted in pulling down a Houſe in *Shoreditch*.

The Evidence on the 3d Indictment.

On the third Indictment againſt *Bedle* and *Latimer*, it was proved, that great Numbers of People being aſſembled in a tumultuous Manner, at *Clerkenwell*, they broke open *New-Priſon* there, and releaſed four Priſoners, two whereof were committed for Felony: That they refuſed to diſperſe, ſaying, they had been Servants long enough, and now they would be Maſters, crying out, *One die, and all die.* That *Latimer* was very active in breaking the Priſon; and *Bedle* being purſued by one of the Soldiers, called to his Comrades to face about, and not leave him.

The Evidence on the 4th Indictment.

Upon the fourth Indictment, it was proved, that *Limerick* marched at the Head of one Company of the Mob, as their Captain, with a Club in his Hand: That he brought them to the Houſe of one *Peter Burlingham*, which they pulled down, and took away ſeveral of his Goods, to the Value of 30 *l.* and, that the reſt of the Priſoners, mentioned in this Indictment, were among the Multitude.

Special Verdicts found, as to ſome of the Priſoners.

The Jury found ſpecial Verdicts on the four Indictments, (the Facts being agreed to be according to the Evidence) againſt *Meſſenger*, *Beaſley*, *Green*, and *Appletree*, in the firſt Indictment; againſt *Cotton* in the ſecond Indictment; againſt *Bedle* and *Latimer* in the third Indictment; and againſt *Limerick* in the fourth Indictment; and ſubmitted the Matter of Law to the Judges. But, as to the other Six, *(viz.) Earls*, *Wilks*, *Woodward*, *Farrel*, *Richardſon*, and *Ford*, the Jury acquitted them.

The reſt acquitted.

The Judges Opinions that the Facts were treaſonable.

The Judges being aſſembled at the Lord Chief Juſtice's Chamber, to conſider of theſe Verdicts, in *Eaſter* Term following, the Lord Chief Baron *Hales* was of Opinion, that theſe Facts did not amount to Treaſon, becauſe the *Stat.* of 1 *M.* c. 12. ſays, *If any Perſons, to the number of Twelve or more, aſſemble with Intent to pull down Encloſures*, &c. *and continue together an Hour after Proclamation made for them to depart, it ſhall be Felony.* If ſuch Actions therefore had been Treaſon at Common Law, it had been to no Purpoſe, he obſerved, to make them Felony by Statute.

To which the reſt of the Judges who were of another Opinion, anſwered, That this Objection had been made in the Caſe of *Bradſhaw*

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ſhaw and *Burton*, in *Popham*'s Reports; but there it was reſolved, That if People aſſembled to alter the Laws, or to ſet a Price on Victuals, or to lay violent Hands on a Magiſtrate, or the like; and with Force attempted to put the ſame in Execution, this was Rebellion and Treaſon at Common Law: And reſolved, that the Statute of 1. *M.* intended only, that if ſuch Perſons, as pretended to have received any *particular* Injury as to their common or other Intereſts in Lands, encloſed, ſhould aſſemble to pull down the Encloſures, it ſhould be Felony; and indeed this was not Treaſon; But where the Deſign is general to pull down *all* Encloſures, in which none of them are particularly concerned, and they put this Deſign in Execution, this was Treaſon at Common Law. And it was held by all the Judges, that the 13. *Eliz.* which makes the Intention, in many Caſes, Treaſon, extends to nothing but where, if the Act had been done, it had been Treaſon at Common Law.

The Judges alſo reſolved, that this Inſurrection, with Intent to pull down Bawdy-Houſes *in general*, and to break open Priſons *in general*, and putting ſuch Deſigns in Execution by Force; either of them was a levying War againſt the King, and High Treaſon within the 25 *Ed.* III. And, as to the particular Caſes on the ſpecial Verdicts, all the Judges agreed, (except the Chief Baron) that as to *Meſſenger* and *Beaſley*, in the firſt Verdict, *Cotton* in the ſecond Verdict, and *Limerick* in the fourth; the Matter found againſt theſe four, was High-Treaſon; and they received Judgment, and were executed thereupon, as Traitors. But, as to *Appletree* in the firſt Verdict, and *Latimer* in the Third, there was a Difference in Opinion; for (beſides the Chief Baron) *Atkyns*, *Tyrrel*, *Wyndham*, and *Wylde*, held that the Verdicts were not ſufficient; becauſe it was not expreſly found, that they were *aiding and aſſiſting*. On the contrary, the Chief Juſtice, with *Turner*, *Twiſden*, *Archer*, *Raynsford*, and *Morton*, were of Opinion, that the Verdicts were full and plain: For, there being ſeveral Acts of Force found, to be committed by them, in Purſuance of their Deſign, there was no Neceſſity to find them *aiding and aſſiſting*. However, there being this Difference in Opinion as to theſe two, the Chief Juſtice recommended them to his Majeſty's Mercy, which was extended to them. And as to *Green* in the firſt ſpecial Verdict, and *Bedle* in the Third, the Judges all agreed that the Verdicts were not ſufficient to denominate the Offence High-Treaſon; becauſe, they only found that they were preſent, but that no particular Acts of Force were committed by them, and it was not found they were *aiding and aſſiſting*. It was ſaid, they might be preſent out of Curioſity: Whether they were *aiding and aſſiſting*, was a Matter of Fact which ought to be expreſly found by the Jury, and not left to the Court to judge upon any colourable Implication; and accordingly theſe two were diſcharged.

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Four of the Priſoners condemned and executed.

Difference of Opinions as to ſome others.

The reſt diſcharged.

Remarks on the Trials of Meſſenger, *&c.*

Ever ſince theſe Trials, the aſſembling in a tumultuous Manner, with Arms, or Weapons of any kind, in order to reform the State, to procure an Alteration of the Laws, or to redreſs any Abuſes, Nuſances, or Grievances, of a Publick Nature, and actually endeavouring to put ſuch Deſigns in Execution by Force, has been adjudged High-Treaſon.

And it appears a little unaccountable, that *Green*, in the firſt ſpecial Verdict, who was found to be among the Mob, with his Staff in his Hand, to throw up his Cap, halloo, to encourage the Inſurrection; and *Bedle*, who was alſo with them at breaking open the Priſon, and called to his Companions to face about, and fight the Guards who came to ſuppreſs them, ſhould be deemed innocent in the Eye of the Law. If the Words, *aiding and aſſiſting*, were wanting in theſe Verdicts, there were certainly Words that amounted to as much; and, indeed, there are too many Inſtances in our Law, where matter of Form is more conſidered, than the Merits of the Cauſe.

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Hawkins's Trial.

The Trial of ROBERT HAWKINS, *Clerk*, for *Felony*, at the Aſſizes held at *Aylesbury*, for the County of *Bucks*, the 11th of *March*, 1668-9. 20 *Car.* II.

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The Charge.

THE Priſoner was indicted for Felony, in ſtealing Rings, Money, and other Goods, out of the Houſe of *Henry Larrimore*.

The Evidence againſt the Priſoner.

The principal Witneſs againſt Mr. *Hawkins*, was *Larrimore*, the Proſecutor, who depoſed, That on the 18th of *September*, being gone from Home with all his Family, to a Hemp-Plot, a little Diſtance from his Houſe, to pull Hemp; and, coming Home half an Hour before Sun-ſet, he found his Doors open; and, running up Stairs, he ſaw the Priſoner through the Chinks of the Boards, rifling a Box; in which, among other Goods, was a Holland Apron, a Purſe with two Gold Rings, two Ten-Shilling Pieces of Gold, and nineteen Shillings in Silver; all which he ſaw the Priſoner turn out of the Purſe, run out of the Houſe with them, and hide himſelf in a Cloſe of Beans.

That the next Day he got a Warrant from Sir *Richard Piggot*, and went with the Conſtable to ſearch the Priſoner's Houſe, which they broke open, on his refuſing them Entrance; and found, in a Baſket filled with Rags, one of the Rings, and a five-Shilling Piece of Silver, which he was poſitive the Priſoner took out of his Purſe the Day before.

Larrimore the Son, depoſed, that coming Home a little after his Father, he ſaw the Priſoner run out of the Houſe, down the Yard, and hide himſelf in a Cloſe of Beans; and asking his Father, if Mr. *Hawkins* had been

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been there, his Father anſwered, he had robbed him.

Joan Beamſley alſo depoſed, that going Home with young *Larrimore*, ſhe ſaw the Priſoner run out of the Houſe, and hide himſelf in a Cloſe of Beans; and heard *Larrimore*, the Father, tell his Son, Mr. *Hawkins* had robbed him.

Richard Mayne the Conſtable depoſed, That *Henry Larrimore*, the Elder, bringing him a Warrant from Sir *Richard Piggot*, to ſearch the Priſoner's Houſe for ſtolen Goods, and the Priſoner refuſing them Entrance, they broke open his Doors; and *Larrimore*, the Elder, found in a Basket the gold Ring and five-ſhilling Piece; and thereupon he carried the Priſoner before Sir *John Croke*, who committed him; and the Deponent carried the Priſoner to *Aylesborough* Goal.

Larrimore's Wife alſo depoſed, That when ſhe was his Servant, ſhe ſaw the Priſoner lurking about their Houſe in the Night-time. *Richard Mantill*, Son-in-law to *Larrimore*, alſo depoſed, he had ſeen him lurking about his Father's Houſe in the Night-time.

Dodſworth Croke, Eſq; depoſed, that he was poſitive the Ring, produced in Court, was ſtolen from *Larrimore*; for that he, the Deponent, pawned it to him.

Good depoſed, that he pawned the five-ſhilling Piece, produced in Court, and found in the Priſoner's Houſe, to *Larrimore*, at the Time of the Seſſions, held in *July*, 1668.

This Evidence againſt the Priſoner, appeared ſo ſtrong and concluſive, that the Lord Chief Baron *Hales*, who tried him, ſaid, there was Evidence enough to hang twenty Men: However Mr. *Hawkins* ſhewed, that it was all a malicious Proſecution.

The Priſoner's Defence.

And firſt he obſerved, That, if the Priſoner had ſeen him rob his Houſe, it was ſtrange he did not call to his Neighbours to aſſiſt in apprehending him; and demanded why he ſearched other Houſes for the Goods he ſaw him ſteal: He obſerved alſo, that, when the Proſecutor went to Sit *Richard Piggot* for the Warrant, he did not charge him poſitively with the Felony: To which *Larrimore* gave no ſatisfactory Anſwer; and, the Priſoner, croſs-examining the Conſtable, he acknowledged that *Larrimore* deſired him to ſearch other Houſes, and did not tell him he ſaw Mr. *Hawkins* rob him. He acknowledged alſo, that it was *Larrimore* the Elder himſelf, that found the Ring and the Five-Shilling a Piece; and another of the Priſoner's Witneſſes depoſed, that the reſt of the Company was in the Hall, when *Larrimore* pretended to find the Money in a Basket in the Buttery: The Goaler depoſed, that the Conſtable told him, the Parſon was a notorious Picklock, and adviſed him to watch him narrowly, and load him with Irons.

The Priſoner's Evidence.

Then the Priſoner examined one *Chilton*, a Shoe-maker, whom the Proſecutor had *ſubpœna'd* as a Witneſs; and *Chilton* depoſed, that, having a Pair of Boots of the Priſoner's to mend, and telling him he would lay them in his Shop-Window when they were done, where the Priſoner might take them (for he ſhould be abroad) the Priſoner accordingly took the Boots out of his Shop-Window: But when the Priſoner came afterwards to demand his Tythes, this *Larrimore*, *Dodſworth*, *Croke*, *Richard Mayne* the Conſtable, and others, adviſed him to indict the Perſon for ſtealing the Boots; and threatned, if the Deponent would not fetch a Warrant for the Parſon, Sir *John Croke* would indict him as acceſſary to the ſtealing of them: And *Larrimore* ſaid, he would make the Deponent ſwear Mr. *Hawkins* had ſtolen the Boots, and actually *ſub-pena'd* him to the Aſſizes for that Purpoſe: That *Croxton* told him the *Monday* before, if he would ſwear Mr. *Hawkins* ſtole the Boots, he would bear him out as far as an hundred Pounds would go; and if that would not do, as far as five hundred Pounds would go; and would give him Bond to make it good: And two other Witneſſes appeared, and atteſted the Truth of *Chilton*'s Evidence.

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Then the Lord Chief Baron ordering the Conſtable to produce the Search-Warrant, it appeared, that the Warrant was dated the Day before the Proſecutor pretended the Robbery was committed; whereupon his Lordſhip obſerved, that the Proſecutor was very cunning to know, on the 17th Day, that he ſhould be robbed on the 18th, and that the Priſoner ſhould rob him; and demanding of Mr. *Hawkins*, Why he refuſed to open his Doors, and ſuffer his Houſe to be ſearched, he anſwered, that moſt of the Perſons preſent were his inveterate Enemies: That Sir *John Croke* and *Larrimore* had often threatened to pull down his Houſe, and hired People to force it open: That they hired one *Faires* to get down his Chimney, and open his Doors, when the Family was abroad, and contracted with one *Tyler* for the ſame Purpoſe; and beſides, they had an Execution againſt him, which *Larrimore*'s Son had executed in Part a few Days before: And that he did offer, that Mr. *Sanders*, the other Conſtable, who lived next Door, might ſearch as narrowly as he pleaſed: All which he proved by unexceptionable Witneſſes: Whereupon the Chief Baron obſerved, that the Buſineſs appeared very foul on Sir *John Croke*'s Part (who was then in Court.)

The Priſoner's Defence continued.

Mr. *Hawkins* obſerved further in his Defence, That this Proſecution of *Larrimore*'s was commenced on his being ſued for Tythes, and it would be eaſy, he ſaid, for the Fanaticks to avoid the Payment of Tythes; if they could do it by hanging up the Clergy: That this *Larrimore* was an Anabaptiſt, and a notorious Enemy to the Church of *England* and her Clergy in general; but particularly to himſelf, he having been obliged to ſue him for his Tythes; and having indicted him for not coming to Church, and not baptizing his Children: That *Larrimore*'s Malice alſo appeared in diſſuading thoſe that owed him Money, from paying him, and perſuading others he owed Money to, to arreſt him, and by diſſuading thoſe he had ſued for Tythes from agreeing with him, and telling them, Sir *John Croke* would force him to run his Country; all which he was ready to prove, and produced a Certificate under the Hands of an hundred of his Neighbours, atteſting the Truth of what he aſſerted: *But this Certificate, not being deemed Legal Evidence, was not read in Court.*

Mr.

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Mr. *Hawkins* ſaid further in his Defence, that it could not be ſuppoſed he ſhould commit a Robbery in his own Pariſh in the Day-Time, where every body knew him: That he had Time enough to make his Eſcape, if he had been guilty of it; and it was ſtrange he ſhould find no other Place to hide the Ring and Five-Shilling Piece, than a Basket that hung up publickly.

Other Witneſſes of the Priſoner.

Then the Priſoner called ſome other Witneſſes, and particularly Mr. *Wilcox*, who depoſed, that on *Friday* the 18th of *September*, when it was pretended the Robbery was committed, the Deponent was at *Larrimore* the Proſecutor's Houſe, from Noon till near Night, driving a Bargain with *Larrimore* for Tiles and other Things; and that Mr. *Hawkins* was not there all that Afternoon, nor did the Deponent hear before his coming away (which was after Sun-ſet) that *Larrimore* was robbed.

Sir *Richard Piggot* alſo depoſed, that *Larrimore* and the Conſtable were with him for the Search-Warrant on the 17th, being the Day before the pretended Robbery (as the Warrant bore Date;) and that the Date was not miſtaken.

A full Proof of the Conſpiracy of Larrimore, *Sir* John Croke, *&c. againſt the Priſoner.*

Then *Brown* depoſed, that he was entruſted by Sir *John Lenthall*, the Marſhal of the *King's-Bench*, to be Sir *John Croke*'s Keeper, who was his Priſoner; and that being with Sir *John* at his Houſe at *Chilton* in *Buckinghamſhire*, on *Wedneſday* the 16th of *Sept.* he heard a great Noiſe in the Night-Time, as he lay in his Bed, and fearing that Sir *John* was contriving an Eſcape, he ſtarted out of Bed in his Shirt, and ſtood at the Dining-Room Door, behind the Hangings, and there he heard *Larrimore* the Proſecutor tell Sir *John Croke*, that he had undone him by cauſing him to contend with the Parſon, for he had entred him in moſt of the Courts in *England*, ſummoned him into the *Crown-Office* and *Chancery*, and he could not maintain ſo many Suits, Sir *John* anſwered, Is that all? Come Brother *Larrimore*, be contented; we will have one Trick more for *Hawkins* yet, which ſhall do his Work. *Larrimore* replied, You have put me on too many Tricks already, more than I can manage; and the Parſon is too hard for us ſtill; Sir *John* ſaid, if thou wilt but act, I will hatch enough to hang *Hawkins:* Can'ſt thou not convey Gold or Silver into his Houſe, and have a Warrant ready to ſearch it? and then our Work is done: Do but go to Sir *John Piggot*, and inform him you have loſt Money and Goods, and deſire his Warrant to ſearch for them; and then take *Dick Mayne* the Conſtable, who is one of us, and will do what we deſire him, and ſearch the Houſe; and when you find the Things, charge him with flat Felony, and force him before me; I'll ſend him to Goal without Bail, and we will hang him the next Aſſizes.

That the *Saturday* following, being the 19th of *September*, as the Deponent was coming home, he heard Mr. *Hawkins* had robbed *Larrimore*, and when he came into Sir *John*'s Houſe, he ſaw a written Paper lie upon the Table; and ſoon after *Larrimore*, with the Conſtable and others, brought *Hawkins* to Sir *John*'s, who took up the Paper, and read it to the Conſtable, and ſaid it was Mr. *Hawkins*'s *Mittimus*; and the Deponent averred, that it was written, and lay on the Table before *Hawkins* was brought to Sir *John Croke*'s: That, on *Sunday* Morning, he went to the Ale-houſe, where they had kept Mr. *Hawkins* all Night, and ſaw them carrying him to Goal: That ſaying to Sir *John*, when he came home, *They have carried the poor Parſon to Goal*, he anſwered, Let him go, and the Devil go with him: Have I not often told you that, if my Brother *Larrimore* and I laid our Heads together, no Body could ſtand before us? And he (the Deponent) replied, *I have often heard you ſay ſo; but never believed it till now.*

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But before *Brown* gave this Evidence, he declared in Court, that both Sir *John Croke* and *Larrimore*, had threatned him, if he came down to the Aſſizes to teſtify what he had heard of this Conſpiracy, they would ruin him and his Family; and for that Reaſon he was afraid to ſpeak, till the Court promiſed him protection: And he had no ſooner given his Evidence, but Sir *John Croke* ſtole off the Bench unperceived.

Then ſaid the Lord Chief Baron, Larrimore, *thou art a Villain; nay, I think thou art a Devil.----Where is this* Sir John Croke? and it being anſwer'd, he was gone, the Chief Baron ſaid, Gentlemen, Sir *John Croke* ſent me this Morning two Sugar Loaves to excuſe his abſence Yeſterday, but I ſent them back again: I did not ſo well know what he meant by them then, as I do now; ſure Sir *John* does not think the King's Juſtices will take Bribes? Mr. *Hawkins* have you any more to ſay?

To which he anſwered, I hope your Lordſhip and the Jury are fully ſatisfied of my Innocence; and his Lordſhip demanding of the Jury, what they thought, They ſaid, it was a very plain Caſe; and without going from the Bar, gave their Verdict that the Priſoner was *Not Guilty.*

Mr. Hawkins *acquitted.*

Mr. *Hawkins* moved, he might be diſcharged without paying his Fees, for that he was very poor, having been put to great Charges by this and other Troubles, the Proſecutors had brought upon him; but the Chief Baron anſwer'd, he could not give away other Peoples Rights; he muſt pay the Fees, if they inſiſted on them.

It ſeems before the Trial was well over, Sir John Croke, Larrimore *the Proſecutor, and the reſt of the Conſpirators, fled out of Town.*

Remarks on Mr. Hawkins's *Trial.*

Whether Mr. *Hawkins* brought his Action againſt Sir *John Croke*, *Larrimore*, and the reſt of the Conſpirators, does not appear; but there is no doubt, he would have recover'd conſiderable Damages, if he had: They might have been indicted, and fined alſo, for ſo foul a Crime: And ſurely that Law was very equitable, which inflicted the ſame puniſhment on a falſe Accuſer, that he would have brought upon his innocent Neighbour.

Mr. *Hawkins* tells us, the Proſecutors were Enemies to him on a double Account: 1ſt, Becauſe he was a Clergyman, and they were Diſſenters;

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Diſſenters: And 2dly, Becauſe he would have his Dues; but it is ſurprizing their Malice ſhould extend ſo far as to take away his Life: And if the furious Zeal of *Larrimore*, an Anabaptiſt, with his Family and Friends of that Sect, ſhould put them upon ſuch vile Practices; yet nothing ſurely can excuſe Sir *John Croke*, a Gentleman of Quality, who contrived and executed ſo Infamous a Scheme. We have not, indeed, wanted Inſtances of Knights and Eſquires, who have ſupported and encourag'd their Tenants and Dependants, in defrauding their Parſon of his Dues, and going to Law with him, till they have ruined him; but their Malice has ended uſually in throwing their unhappy Paſtor into a Goal, and ſeizing his Goods. Sir *John Croke* is the only Man upon Record, that ever deſcended ſo low as to become a Devil incarnate, falſly to accuſe his Miniſter of Capital Crimes, and take away his Life by Forms of Law, becauſe he inſiſted on his Tythes. This ſhould be a Caution to Gentlemen, when they contend with the defenceleſs Clergy, how they ſuffer their Paſſion to get the better of their Reaſon and Conſcience, and hurry them into Meaſures that muſt render them infamous to all Poſterity.

Is it not a glorious Action for a Gentleman of Quality and Fortune, to oppreſs and ruin a poor Prieſt of his own Religion! They have Enemies enough among the Sectaries, and the loweſt Claſs of Men. How mean a Part is it in a Gentleman then, who ſhould be a Patron and Protector of the Church and Clergy, to join with the Dregs, and Refuſe of Mankind, in diſtreſſing them; eſpecially when we ſee every other Perſuaſion and Denomination of Chriſtians, and even Infidels, treating their Prieſts with the higheſt Veneration! A certain Baronet, now living, who had encouraged his Tenants to go to Law with their Parſon, till they had ſeized his Goods in Execution, became afterwards ſo much aſhamed of his Victory, that he reconciled himſelf to the unhappy Man, proved one of his beſt Friends, and is ſtill every Day doing ſome ſubſtantial Kindneſs to the Parſon he was once zealous to deſtroy. May other Gentlemen make the like Reflections, and entertain a more friendly Correſpondence with the Clergy of their ſeveral Pariſhes, than they uſually do; and not make a ſervile Submiſſion the only Condition of their Friendſhip: And, on the other Hand, may the Clergy always behave themſelves with that Goodneſs and Prudence, as to merit the Eſteem and Friendſhip of the Gentry; and eſpecially of their Patrons and Pariſhioners, whoſe Welfare ought to be their principal Study.

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Penn *and* Mead, *their Trial.*

The Trial of WILLIAM PENN, and WILLIAM MEAD, for a *Riot* and *Conſpiracy*, at the *Old-Bailey*, the 1ſt, 3d, 4th, and 5th of *September*, 1670. 22 *Car.* II.

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The Charge.

THE Priſoners were indicted for a Riot and Conſpiracy; for, that they, with divers other Perſons, to the Number of three hundred, did, on the 14th of *Auguſt*, then laſt paſt, unlawfully and tumultuouſly aſſemble themſelves in *Grace-church-ſtreet*, to the Diſturbance of the Peace: And, that the ſaid *William Penn* (by Agreement between him and the ſaid *William Mead*, and abetted by him) did there ſpeak and preach to the ſaid *William Mead*, and the reſt of the People ſo aſſembled; whereby a great Concourſe and Tumult was made, and continued, to the great Terror and Diſturbance of his Majeſty's Subjects.

This Trial being collected only from ſome partial Minutes of the Priſoners is very imperfect.

The Priſoners fined for not pulling off their Hats.

The Priſoners relate, that as they were brought into Court, a Perſon took off their Hats; but an Officer was ordered to put their Hats on again, and they ſtood with their Hats on.

Whereupon the Recorder demanded, if they did not know it was the King's Court; and why they did not pull off their Hats, and pay that Reſpect to it they ought?

Penn anſwered, he knew it to be a Court, and he ſuppoſed it to be the King's; but he did not think pulling off his Hat ſhewed any Reſpect; and they were fin'd forty Marks apiece for their Contempt: Whereupon *Penn* obſerved, That they came in with their Hats off, and the Court had ordered them to be put on, and therefore the Bench ought rather to be fined than they.

A Jury being ſworn, and charged with the Priſoners, the Witneſſes appeared; and firſt, *James Cook*, a Lieutenant of the *Militia*, depoſed, That, being ſent for to diſperſe a Meeting in *Grace-church-Street*, he found *Penn* ſpeaking to the People; and that *Mead* came to the Deponent, and deſired him to let *Penn* go on, and when he had done, he would bring him to the Deponent: Other Witneſſes depoſed, that there were three or four Hundred People aſſembled in *Grace-church-Street:* That *Penn* was preaching to them, and that *Cook*, an Officer of the *Militia*, and the Conſtables, came to diſperſe them, but they could not.

Then the Recorder demanding of *Mead*, if he was there? *Mead* anſwered, It is a Maxim in your Law, *Nemo tenetur ſeipſum accuſare.* Why doſt thou endeavour to enſnare me? Is this like a Judge, who ought to be of Counſel for the Priſoner?

Penn added, We declare to all the World we believe it to be our indiſpenſible Duty, to meet inceſſantly upon ſo good an Account: Nor ſhall all the Powers on Earth divert us from adoring our God who made us.

To which the Court anſwered, you are not brought here for worſhipping God, but for breaking the Law.

Penn

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Penn replied, they had broken no Law, and desired to know on what Law the Indictment was founded; and talking very pertly to the Court, *Penn* was ordered to be put into the Bail-Dock, (a little Room near the Court, where Prisoners are secured till they are brought to the Bar.)

Then *Mead* said, You, Men of the Jury, I stand here to answer an Indictment, a Bundle of Stuff, full of Lyes and Falshood: They charge, that we met *Vi & armis illicite & tumultuose:* Time was, indeed, when I had the Freedom to use a carnal Weapon; (he had been a Captain) and then I thought I feared no Man. But now I fear the living God, and dare not make Use thereof, or hurt any Man; nor do I know I demeaned myself as a tumultuous Person; and therefore *William Penn* properly demanded on what Law the Indictment was founded: *Coke* tells us, *a Riot is, where three, or more, are met together, to beat a Man, to enter forcibly into his Land, or to cut down his Grass, Wood, or Pales.*-The Recorder added, *Or to do any other unlawful Act:* But, I thank you Mr. *Mead*, for telling me what the Law is, (pulling off his Hat) *Mead* answered, *Thee may'st put on thy Hat; I have never a Fee for thee now.*

The Lord Mayor replied, you profess yourself a meek Man, but deserve to have your Tongue cut out for affronting the Court: And *Mead* continuing to revile and reproach the Judges, he was sent after *Penn* into the Bail-Dock; and the Recorder proceeded to sum up the Evidence: Whereupon *Penn* and *Mead* cried out, it was illegal to direct the Jury in their Absence: To which the Recorder answered, You are present, you do hear; and continued his Directions to the Jury; who, being withdrawn, and returning into Court, said, that *Penn* was Guilty of speaking in *Grace-church-Street.*

The Court thereupon observed, they might as well have said nothing, if they did not find there was a Tumult, or unlawful Assembly there: And the Jury withdrawing again, returned the following Paper, signed by all of them.

The Jury give an imperfect Verdict.

We, the Jurors hereafter named, do find William Penn *to be Guilty of Speaking or Preaching to an Assembly, met together in* Grace-church-Street, *the* 14*th of* August *last*, 1670. *And that* William Mead *is Not guilty of the said Indictment.*

The Lord Mayor thereupon said, you have heard that he preached, that he thereby created a Tumult, and that *Mead* abetted him; and they not only disobeyed the Martial, but the Civil Power.

Penn answered, we did not make the Tumult, but they that interrupted us: We were, by Force and Arms, kept out of our lawful House, and met together, in a peaceable Manner, as near to it as the Soldiers would give us Leave.

They are kept two Days without Meat, &c.

Then an Officer was sworn to keep the Jury without Meat, Drink, Fire, or Candle, till next Morning: When, returning into Court, they refused to give any other Verdict than they had done the Night before.

The Recorder told them, he would have a positive Verdict, or they should starve for it.

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To which *Penn* said, They had found *William Mead, Not Guilty*, and that was a Verdict.

The Recorder answered, You are indicted for a Conspiracy; and one being found *Not Guilty*, and not the other, it cannot be a Verdict.

Penn replied, the Consent of the Jury is a Verdict: And, if *William Mead* be not Guilty, I am acquitted of Course; I could not conspire alone: And, the Jury being kept another Night without Meat and Drink, Fire or Candle; and, refusing to give any other Verdict, were fined forty-Marks apiece, and committed to *Newgate* till their Fines were paid, for going contrary to plain Evidence.

Fined 40 Marks for refusing to give any other Verdict.

The Prisoners also were remanded to *Newgate* again, till their Fines, for their Contempt of the Court, were paid.

Remarks on Penn *and* Mead's *Trial.*

The fining these Quakers for not pulling off their Hats, and insulting the Court, was certainly lawful. The Prisoners seem to admit it, when they affirmed, The pulling off their Hats was not a Mark of Disrespect: But, surely, the Custom of every Nation must determine what is, and what is not, a mark of Disrespect. In the East, whoever enters a Temple, or appears in the House of a great Man, pulls off his Shoes at the Door, and keeps on his Cap or Turbant: It would there be deemed a Piece of Rudeness to uncover the Head, or appear with Shoes on, before our Superiors. On the contrary, here we look upon it as a Piece of Insolence, to come into a Church, or before a Magistrate, with our Heads covered; and, a Court of Justice may resent the Affront, and fine any Man who shall appear in Court with his Hat on. But, the Lord Chief Justice *Holt*, seems to have carried the Matter too far, when he would not suffer a Woman to come before him with a Hat on: Unless it was, that he thought her Hat contributed to disguise her, and the Witnesses would not know her so well as when it was off: For neither in Churches, or Palaces, was it ever expected, that a Woman should appear bareheaded among us.

But to proceed to the Quakers Defence: They pretended all Men, and particularly *Englishmen*, were at Liberty to worship God in their own Way; and, therefore, their meeting at a Conventicle, could not be illegal, or such an Assembly deemed riotous or tumultuous.

But, where is the Nation or People, that will suffer the established Religion to be reviled and derided; or, which is much worse, suffer such Doctrines to be broached and encouraged, as sap the very Foundation of the Religion of their Country, as the Quakers do that of the Christian Religion; resolving all the History of the Gospel into Fable and Allegory, and looking upon themselves as much the Sons of God, as *Jesus Christ*, who died for the Salvation of Mankind? And, as to the particular Laws of this Kingdom, every one knows that the Laws of Uniformity were then in full Force; and there were several

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Acts of Parliament for ſuppreſſing Conventicles; and, conſequently, ſuch People as ſet up other Forms of Worſhip, and aſſembled to propagate new and unheard-of Doctrines, inconſiſtent with the Religion eſtabliſhed, were Criminal in the Eye of the Law; and the Priſoners were, nevertheleſs, Guilty, though there happened to be ſome Fanaticks upon the Jury, that were reſolved to acquit them. On the other hand, it muſt be acknowledged, that the threatning and fining the Jurors, for giving a Verdict contrary to Evidence, was illegal: If the Jury would perjure themſelves, and go contrary to Evidence, there was no Remedy; for ſuch Facts can be tried only by a Jury. Had the Court a Power of compelling the Jury to alter their Verdict, then the Court would be Triers of the Fact, and we ſhould loſe the great Barrier of our Liberties. Much better two or three Quakers ſhould eſcape unpuniſhed, than ſuch a fatal Breach be made in our Conſtitution.

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Barnardiſton *and* Soame.

The Trial between Sir SAMUEL BARNARDISTON, *Bart.* Plaintiff, and Sir WILLIAM SOAME, *Knt.* Sheriff of *Suffolk*, Defendant, upon an Action of the Caſe brought by the Plaintiff againſt the Defendant, for Damages he ſuſtained, againſt the Defendant's making a double Return at an Election for a Knight of the Shire for *Suffolk*, before the Court of *King's-Bench*, in *Trinity-Term*, 1674. 26 *Car.* II.

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The Declaration.

THE Declaration ſets forth, that whereas the King, the 8th of *February*, in the 25th Year of his Reign, by a writ out of *Chancery*, directed to the Defendant, then Sheriff of *Suffolk*, commanded the Sheriff to cauſe an Election to be made of Knight of the Shire for the ſaid County, in the Room of Sir *Henry North*, then lately deceaſed; and the Plaintiff being duly elected Knight for that County by the greater Number of Freeholders, and the Writ returned by the Defendant into *Chancery*, together with an Indenture between him, the ſaid Sheriff, and the Electors of the aforeſaid Election of the Plaintiff; yet the Defendant, the Sherriff, *Officii ſui debitum minime ponderans, ſed machinans & malitioſe intendens ipſum Samuelem in hac parte minus rite prægravare*, and to deprive the Plaintiff of the Truſt and Office of one of the Knights of the Shire for the ſaid County, and to cauſe the Plaintiff to ſpend great Sums of Money; *falſely*, *maliciouſly*, *and deceitfully*, returned into *Chancery*, together with the aforeſaid Indenture, another Indenture annexed to the ſaid Writ, purporting the ſame to be made between him the ſaid Defendant, then Sheriff, of the one Part, and divers other Perſons, declaring that the ſaid other Perſons, as the greater Part of the Freeholders of the ſaid County, did chuſe one Sir *Lionel Talmach*, Bart. otherwiſe called Lord *Huntingtowre*, Knight of the Shire for the ſaid County; whereas in Truth the ſaid *Lionel* was not choſen by the greater Part: By Reaſon of which falſe Return of the ſaid other Indenture, the Plaintiff could not be admitted into the lower Houſe at the Return of the ſaid Writ, nor till along Time after; when he had petitioned the Commons, and ſpent divers great Sums of Money, proving his ſaid Election, and ſuſtained great Pains and Labour in that Behalf: But on the 20th of *February*, 26 *Car.* II. he was admitted into the Houſe, and his Election declared good; and avers his Damages amounted to 3000 *l.*

To this Declaration, the Defendant pleaded *Not Guilty*; but a Verdict was given for Plaintiff, and 800 Pound Damages.

Not guilty pleaded. A Verdict.

Whereupon Judgment was obtained in the *King's-Bench* for the 800 Pound Damages, and 98 Pounds Coſts of Suit.

Judgment for the Plaintiff.

The Defendant, Sir *William Soame*, thereupon brought a Writ of Error, before the Juſtices of *Common-Pleas*, and the Barons of the *Exchequer* in the *Exchequer-Chamber*, to reverſe the ſaid Judgment; and it was reverſed by the Opinion of two of the Juſtices of the *Common-Pleas*, and the four Barons of the *Exchequer*, who held it to be erroneous. Sir *Robert Atkyns* and Sir *William Ellys*, Juſtices of the *Common-Pleas*, however, were of Opinion, that the ſaid Judgment was good.

A Writ of Error.

The Judgment reverſed.

After the Revolution, Sir *Samuel Barnardiſton* brought his Writ of Error in the Houſe of Peers, to reverſe the Reverſal of the Judgment given in the *Exchequer*; but the Houſe affirmed in the Reverſal of the ſaid Judgment. The Editor of this Trial hath not given us any of the Arguments of the Counſel in the Court of *Kings-Bench*, or in the *Exchequer-Chamber*, either for the Plaintiff or Defendant. All the Arguments we meet with are thoſe of Sir *Robert Atkyns* and Sir *William Ellys*, Juſtices of the *Common-Pleas* (in the *Exchequer-Chamber*) for affirming the Judgment given in the *King's-Bench*; and the Arguments of the Lord Chief Juſtice *North* for reverſing the ſaid Judgment.

The Reverſal confirmed by the Houſe of Lords.

The two Judges that argued for confirming the Judgment given againſt the Defendant, in the Court of *King's-Bench*, held, 1ſt, That the Matter, ſet forth in the Plaintiff's Declaration, was Actionable: 2dly, That the Wrong and Injury complained of, was ſuch as the Law gave him a Remedy for: And 3dly, That he had taken his proper Remedy, by bringing his Action on the Caſe.

Arguments for confirming the Judgment.

They inſiſted that, where a Wrong or Injury was done, and a Particular Damage ſuſtained, there the Common Law gave a Remedy by Action.

1. From

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1. From the Nature and Quality of the Law, which was to do Right to all: For, ſhould there be any Caſe where a Perſon might receive an Injury and Damage, and yet have no Remedy or Redreſs, the Law would be defective.

2. From the Nature and Definition of an Action in our Law Books, which is declared to be nothing elſe but a *Means or Remedy for a Man to have Right done him, that has received Wrong and Injury.*

Then they proceeded to ſhew, that there was a Wrong or Injury done to the Plaintiff, and a particular Damage ſuſtained by him: He had, they obſerved, the Honour to be choſen to that great Truſt and Employment of a Knight of the Shire, by which he was entitled to ſeveral great Privileges, and to Wages for the Time he ſerved. And the Defendant having the Office of Sheriff, and being bound by his Office and Oath to do juſtly and truly, and well knowing the Plaintiff had the only Right to be returned; yet falſely, maliciouſly, and deceitfully, to deprive him of his Truſt and Office, and on Purpoſe to put him to great Charges, had returned another Perſon with him; by Means whereof the Plaintiff was hindered from ſitting in the Houſe, put to great Expence, and underwent great Trouble and Labour; after which, they thought it could not be made a Queſtion, whether the Plaintiff had received a particular Damage. Should a Man have an Action for a Penny Treſpaſs, for an Aſſault and Battery, where one only lift up his Hand to ſtrike, or for a few ill Words? and ſhould he have no Action for ſo notorious an Injury as this?

Then they proceeded to anſwer the Objections of thoſe that agreed for the Defendant Sir *William Soame*, which Sir *Robert Atkyns* obſerved, had more Wit than Weight in them: The Difficulty, he ſaid, lay rather in the great Power and Intereſt of the Parties to the Action, and of thoſe that concerned themſelves in the Example and Conſequence of it, upon a politick Account, than from any Uncertainty in the Law: There was a Deſign, he feared, to model the Parliament to the Humour of the Court; and cited Sir *Edward Coke*, 10 *Rep. fol.* 6. where he affirmed, That he never ſaw any Caſe of great Value proceed quietly, without many Exceptions in Arreſt of Judgment.

Objections anſwered.

1. To the firſt Objection, *That this was a Matter of a publick Nature, and therefore the Action ought not to be brought by a private Man, or the Satisfaction made to any one Man.*

Anſw. It was anſwered, that publick Injuries indeed, where all or very many were concerned, were proper for a publick Proſecution, as in the Name of the King; or by a Preſentment at a Leet or Quarter-Seſſions, *&c.* But if a particular Man receive a particular Damage, by the publick Offence or Injury, he ſhall have his Action, which is conſiſtent with the Proſecution for the Publick, as if a Man make a Ditch in the King's High-way: This is a publick Wrong, and preſentable at the Leet: But if a Man and his Horſe fall into that Ditch, and receive a particular Damage, he may have his Action upon the Caſe, againſt him that made the Ditch: So in this Caſe, this falſe and double Return was an Injury to the King and Kingdom: But it was more particularly an Injury to the Plaintiff, in that he was for ſome Time deprived of the Honour done him by his Country; hindred of diſcharging the Truſt committed to him by his Country; of doing Service to the King and Kingdom; and hindred of his Wages. And ſince it ſo nearly concerned the Government, they that were Judges ſhould be the more careful to diſcharge ſuch Abuſes committed by Sheriffs in Elections: It was of vaſt Concern to the King and Kingdom, that Elections ſhould be fair, and Returns duly made, without Partiality and indirect Means uſed; and they ought to encourage all Remedies againſt ſuch Abuſes and Practiſes: Beſides, the Plaintiff had been put to great Expences, and undergone great Labour and Trouble, which was a private and particular Damage, and therefore entitled him to his particular Action.

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The Statute of 7 *Hen.* IV. *Cap.* 1. recites, that the Commons made Complaint to the King of the undue Election of Knights of the Counties which, the Preamble ſays, were ſometimes made by the Affection of the Sheriffs; and that Statute, to prevent ſuch Abuſes; appoints the Return of Indentures under the Seal of the Sheriff, and the Seals of the Electors.

The Statute of 11 *Hen.* IV. *cap.* 1. recites, that no ſpecial Pain is ſet upon the Sheriff, if he makes a Return contrary to former Statute; and therefore authorizes the Judges of Aſſize to inflict a Penalty of 100 Pound upon the Sheriff; and the Knights unduly returned were to loſe their Wages.

The Statute of 23 *Hen.* VI. *cap.* 15. ſets forth the great Abuſes committed in Elections, reciting, that of late divers Sheriffs, *for their ſingular Avail and Lucre*, had not made due Elections of Knights; and enacts, that ſuch Sheriff ſhould not only incur the Pains inflicted by the 8 *Hen.* VI. *cap.* 7. (*viz.* forfeit 100 Pounds to the King, and ſuffer a Year's Impriſonment without Bail,) but he ſhould forfeit to the Perſon duly choſen and not returned, an 100 Pound more; the Party grieved commencing his Action within three Months after the Beginning of the Parliament; and the Perſon unduly returned, was to forfeit likewiſe an 100 Pound to the King and 100 Pound to the Party wrongfully kept out.

So that a Perſon elected a Knight, and not returned, is by this Act declared to be agrieved and wronged: And if he have a particular Wrong done him, it follows, that he ought to have a particular Remedy and Satisfaction by the Common Law, if theſe Statutes had never been made; for theſe Statutes do not make him a Party grieved, but mention him as being ſo before; and, if he were ſo, the Law gave him a Remedy.

2. The ſecond Objection was, *That this Action, concerning the Election of a Knight to ſerve in Parliament, belonged to the Juriſdiction of the Parliament only, and ought not to be determined by any inferior Court.*

To

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To this it was anſwered, That the Right of Election was not called in Queſtion: That was determined by the Houſe of Commons: This Action was in Purſuance of that Deciſion, and grounded upon it; and there are ſeveral Caſes that concern the Parliament, that the Judges of *Weſtminſter-Hall* have not at all Times taken Cognizance of; as what is a good Seſſion of Parliament, and what makes a Seſſion; whether Acts of Parliament are in Force, or not; and when the Members are entitled to Privilege.

And here, taking an Opportunity to enquire into their Juriſdiction, Sir *Robert Atkyns* mentioned the Opinion of Sir *Robert Cotton*, who affirms, That Writs of Summons for Knights of the Shire to ſerve in Parliament began in the 49th Year of *Hen.* III. and that the admitting Commoners into Parliament was done with a Deſign of leſſening and curbing the Power of the Lords, after the Defeat of the Earl of *Leiceſter*, and the Barons, at the Battle of *Eveſham*. To confirm which Opinion, it was obſerved, That the firſt Writ to the Sheriffs to ſummon Knights from every Shire, was found upon Record in the Cloſe Roll, 49 *Hen.* III. the very ſame Year: And Mr. *Prynne*, in his Preface to Sir *Robert Cotton*'s Abridgment of the Records, ſays, *The King and Lords were antiently Judges of the Legality of Elections of Members of the Houſe of Commons, even till the Time King* Henry VII.

But (adds Sir *Robert Atkyns*,) We know that the Houſe of Commons is now poſſeſſed of the Juriſdiction of determining all Queſtions, concerning the Election of their own Members, ſo far, at leaſt, as concerned their being admitted or excluded from ſitting there: And here the Plaintiff ſhews the Determination of the Commons to be on his Side; and not only alledges that he was duly elected, but ſo returned by the Defendant himſelf: And that, though he were ſome time hindered from ſitting, on Occaſion of the falſe Return, and the Election brought into Queſtion by it, yet had he proved it clearly to the Houſe, and was admitted; and, taking it for granted that he was duly elected, he ſued in the *King's-Bench* by this Action, to recover Damages for the Injury done him by the Defendant; for which the Houſe of Commons could not help him, having no Juriſdiction for that Purpoſe: they are not empowered to adminiſter an Oath, or give Damages.

3. It is objected, in the third Place, *That this is an Action of a new Invention:* Never any ſuch was brought before, unleſs that of *Nevil* againſt *Stroud*, which never received any Determination.

To which it was anſwered, That this was new indeed in the particular Circumſtances, as being brought for a malicious, double Return; but it was not new in the general Nature of the Action: For nothing was more common than Actions upon the Caſe where an Injury was done, and Damages ſuſtained; and Actions on the Caſe had been brought even againſt Sheriffs, for falſe Returns, in leſſer Matters; and that, where there was no Malice, or any of the aggravating Circumſtances that were in this Caſe particularly: Actions have been brought againſt Sheriffs for returning Juries inſufficient to pay Iſſues, and for not warning a Man in due Time, upon a Writ of *Præmunire*, or Attachment, whereby he ſuſtained Damage: Though this was but a bare Neglect, or Omiſſion, the loweſt of all Injuries; and yet, being accompanied with a particular Damage to the Party, and there was no Malice on the Sheriff's Part, it was held the Action would lie; much more ſhall the Action lie againſt the Sheriff in this Caſe, where the Return is not only falſe, but he knew it to be falſe; and did it maliciouſly, with a Purpoſe to hinder the Plaintiff from ſitting, and to put him to Expence; and the Plaintiff had actually received conſiderable Damages.

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Caſes omitted and new, do often preſent themſelves; but every new Caſe does not require a new Law; for then the Legiſlative Power muſt be exerciſed continually: Though it differs from former Caſes in Circumſtances, it may fall under a general Rule, and be proceeded upon by Parity of Reaſon. Till of late Years Sheriffs have given no Occaſion for the like Action: We find no double Returns in antient Times: The Common-Law complies with, and conforms to, the general Opinion and Genius of the Kingdom, and values what they generally eſteem and value, and diſeſteems what they value not.

Heretofore an Election to ſerve in Parliament was not ſo deſirable, and ſo much ſought after as it is now. A Patent of Exemption was granted, 42 *Ed.* I. to the Town of *Torrington*, on the Petition of the Inhabitants; reciting, that the Men of that Town never uſed to ſend Burgeſſes to Parliament, till the Sheriff, 21 *Ed.* I. *ſummonitos fuiſſe malitioſe retornavit:* So that (ſays Sir *Robert Atkyns*) a malicious Return to Parliament was no new Thing; and, as the Plaintiff in this Action had well ſued the Sheriff, for returning another with him, ſo he made no Doubt, as the Caſe then ſtood with the general Humour and Opinion of the People, thoſe of *Torrington* might have had their Remedy againſt the then Sheriff, for returning them ſummoned: The Law was ſtill the ſame, in that it ſtill ſet a Price and Eſteem upon that which the People generally eſteemed and valued.

4. The fourth Objection was, *That there was not one Caſe in Law parallel to this*, for a Sheriff to be ſued for returning the whole Truth, and ſomething more than the Truth; though Actions for falſe Returns were frequent.

To this it was anſwered, That this Action was for a falſe Return, and ſomething more. The Plaintiff alledges, That he did make a falſe Return, and the Jury having found it ſo, it muſt be believed. Though the Sheriff returned the whole Truth; yet, with that Truth he returned a Falſhood, and, till it was examined, it could not appear which was the Truth, and, in the mean Time, the Plaintiff ſuſtained all his Damage.

5. It was objected, *That the Sheriff herein acted as a Judge*; and therefore, if he erred, he was not to be ſued for it.

The

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The Anſwer to which was, That this was true, where one was a Judge of Record; but here, the Sheriff was no more than an Officer appointed to take the Poll.

Object. 6. *The Statute* 23 Hen. VI. Cap. 15. *hath provided a Remedy againſt the Sheriff for Abuſes committed by him at Elections*; and particularly, gives 100*l.* to the Knight injured: And the Preamble of that Act, reciting, that a convenient Remedy for the Party grieved, was not ordained in the former Statutes, it was inferred from thence, that there was no Remedy for the Party grieved, at Common-Law, before that Statute. To this it was anſwered that they had already ſhewn that there was a Remedy at Common Law, before that Statute; and this Statute, being in the Affirmative, did not take it away, only gave another Remedy: And they put ſome Caſes, where Acts of Parliament had given Remedies; and yet there were other Remedies before, at Common Law, and the Party might ſue for either. *Roll. Abr.* 1 *Part. Fol.* 93. *Caſe.* 20.

Arguments for reverſing the Judgment.

The Lord Chief Juſtice *North*, who argued for the reverſing the Judgment given againſt the Sheriff, took the following Method.

1. He endeavoured to remove the Prejudices the Caſe lay under:

2. Gave his Reaſons againſt the Action: And,

3. He conſidered what had been ſaid on the other Side, to maintain the Action.

1. He endeavoured to remove that Prejudice, That, becauſe an Action lay for the falſe Returns of Sheriffs, therefore it ought to lie in this Caſe; for, he obſerved, there were ſeveral material Differences between ordinary Returns, and this Caſe: In ordinary Returns, the Party is concluded, and without Remedy: In ordinary Caſes, the Sheriff may, and often does, take Security of the Plaintiff; or the Sheriff hath Means to ſecure himſelf by Law.

But, in this Caſe the Party is not concluded; for upon a Petition to the Parliament, they may cauſe the Return to be altered: Nor may the Sheriff take Security of the Parties: This would be criminal in him: Nor can the Sheriff make a fruitleſs Return, or obtain the leaſt Delay to conſult his Safety. Theſe Differences are of that Nature, that they change the Caſe; and no Man can infer, becauſe an Action lies for falſe Returns in ordinary Caſes, therefore it lies in Caſe of a Return to Parliament.

2. He gave his Reaſons againſt this Action.

1. Becauſe the Sheriff, as to the declaring the Majority, was Judge; and no Action would lie againſt a Judge, for what he did judicially. There are many Qualifications, of which the Sheriff is Judge in this Caſe; as 1. Whether the Elector have forty Shillings *per Annum*. 2. Whether it be Freehold. 3. Whether he have it by a fraudulent Gift, only to get a Vote. 4. Whether the Candidate be reſident. And, 5. of many Incapacities, ſuch as Bribery, Force, *&c.* Such Queſtions frequently ariſe, and are of ſuch Difficulty ſometimes, that a Committee determines one Way, and the Houſe another: And, though it be objected, that the Sheriff may give an Oath concerning all Qualifications, and is to look no further; he anſwered the Statute had, indeed, given the Sheriff Power to adminiſter an Oath; but, the Statue did not ſay, that whoever took that Oath, ſhould have a Voice; neither did the Statute of 23 *Hen.* VI. ſay, that the Sheriff ſhall not be charged with a falſe Return, that purſues this Way: If it ſhould be known to the Sheriff, that the Man, taking ſuch an Oath, ſwears falſe, the Sheriff muſt determine, according to his own Judgment, and not by what is ſworn: Concluding, that the Sheriff, therefore, as to declaring the Majority, was Judge; and, that there was the ſame Reaſon he ſhould be free from ſuch Actions, as any Judge in *Weſtminſter-Hall.*

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It ought to be conſidered, alſo, what Diſadvantages a Sheriff lies under; what a Noiſe and Crowd there uſually is at ſuch Elections; what Importunity; nay, what Violence he ſuffers ſometimes from the contending Parties: No other Judge had more need of Courage and Reſolution to determine uprightly: No other Judge determined in Caſes of greater Conſequence to the Publick, or greater Difficulty; and, ſhould he be expoſed to ſuch Actions, he would have trouble enough. Let him return never ſo uprightly, the Party that is rejected will revenge it by a Suit, eſpecially if he may ſue at common Law, to have boundleſs Damages, without running any Hazard to himſelf, but the Loſs of his Coſts.

2. His ſecond Reaſon againſt the Action, was, that it belonged to the Houſe of Commons, to examine both the Right of Election, and the Behaviour of the Sheriff: That theſe were incident; and, indeed, the only Conſiderations that could guide them in the Trial of ſuch Cauſes, if they were allowed: As it was admitted, that the Parliament was the only proper Judicature to determine the Right of Election, and cenſure the Behaviour of the Sheriff: How could the common Law try a Cauſe, that could not determine thoſe Things, without which the Cauſe could not be tried?

No Action upon the Caſe will lie for a Breach of Truſt, becauſe the Determination of the principal Thing, *The Truſt*, does not belong to the Common Law, but to the Court of Chancery; and the Reaſon of this Caſe is as much ſtronger, as the Parliament ought to have more Regard paid to it, than the Court of Chancery.

They objected, indeed, that this Caſe might be tried after the Parliament had decided the Election; for then, what the Common Law could not try, was determined; and as the Parliament could not give the Plaintiff the Coſts he was put to, theſe were to be recovered at Common Law.

Thus they would have the Determination of the Parliament, binding to the Sheriff, which could not be; for that Diſpute was between other Parties, and the Sheriff was not called to anſwer for himſelf; and it was againſt Law that any Judgment or Proceeding betwixt other Parties ſhould bind the

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Intereſt of a third Perſon, or any Way conclude him. It was not fit that the Sheriff, who was not admitted to controvert their Determination, ſhould be conclued by it, and an Action brought upon it to make him Pay the Reckoning: Had the Parliament believed, when they determined this Election, that they paſſed Sentence againſt the Sheriff to pay 800*l.* they would, and ought in Juſtice, to have heard his Defence, before they determined it: For, had he been allowed to defend himſelf, he might have ſhewn a Majority, or an Equality of Voices; but, as he was not heard, ſo was he not ſo much as cenſured in that Diſpute.

Nor does it follow that, becauſe the Parliament cannot give Coſts, therefore this new deviſed Action muſt lie, to help the Party to them; for then ſuch an Action muſt lie wherever a Wrong is to be remedied by Courſe of Law, and no Coſts are given for it.

At Common Law, no Coſts were given in any Caſe, and many Caſes remain at this Day, where the Statutes have given no Coſts; and yet no Actions will lie to recover thoſe Coſts. Beſides, the Parliament have had this Matter under Conſideration, as appears by the Statute 23 *Hen.* VI. and have appointed what ſhall be paid by the Sheriff that offends, *(viz.)* 100*l.* to the Party, and 100*l.* to the King, beſides a Year's Impriſonment. The Parliament have ſtated what ſhall be paid for Compenſation, and what for Puniſhment; and would have provided for Coſts if they had thought fit.

3. His third Reaſon againſt this Action, was, becauſe a double Return was a lawful Means for the Sheriff to perform his Duty in doubtful Caſes; and, if ſo, all the Aggravations of *falſo malitioſe & ſcienter*, will not make the Thing actionable; for, whatever a Man may do for his Safety, cannot be the Ground of an Action.

If the Parliament did not allow a double Return, in doubtful Caſes, they ought never to accept a double Return; but this muſt of Neceſſity be the Courſe in doubtful Caſes: For, ſuppoſe the Election to be equal, or that the Election is void for Force, if the Sheriff doubts of the Validity of ſome Voices, ſhall he tranſmit his Doubts *ſpecially* to the Parliament? Was there ever any ſuch Thing done? Was there ever any other Way but to make a double Return, and fairly leave it to the Deciſion of the Parliament.

The Practice has been hitherto, to receive double Returns; and in this very Caſe the double Return was accepted, and the Sheriff no Way puniſhed for it, as he would, and ought to have been, if he had been blameable: And, as double Returns are accepted, and allowed by Parliament, they muſt be lawful: and, if ſo, this Action is not maintainable.

4. A fourth Reaſon againſt this Action, was, that there were no legal Damages occaſioned by the Sheriff: The Damages laid in the Declaration, are, 1. *The being kept out of the Houſe.* 2. *The Pains and Charges the Plaintiff was put to, to get Admittance into the Houſe.* But his being kept out of the Houſe is as much every Man's Damage, as the Plaintiff's; and, conſequently, neither he nor any particular Man can have an Action for it, except where a ſpecial Loſs is occaſioned by it, and here is no Loſs to the Plaintiff: For to ſit in Parliament is a *Service* in the Member, for the Benefit of the King and Kingdom, *and not for the particular Profit of the Member:* For which Reaſon the Statute of 23 *Hen.* VI. does not give the Action to the Party for his particular Damage; but the Action given is a popular Action, only the Party grieved hath a Preference for ſix Months: But, if he does not ſue within that Time, every Man elſe is at Liberty to recover the ſame Sum. 2. And as to the Pains and Charges he was put to, this was not occaſioned by the Sheriff, but by the Deliberation of the Houſe; and why ſhould the Sheriff pay for that? It was a Courſe taken by the Parliament, for their own Satisfaction, and they found no Fault with the Sheriff for putting them to that Trouble. Had Sir *Samuel Barnardiſton* been returned alone, and the Lord *Huntingtowre* had petitioned againſt that Return, there had been the ſame Charge to have defended that Return; ſo that it was the Conteſt of the oppoſite Party that occaſioned the Charge, the Deliberation of the Parliament that occaſioned the Delay; but neither of them can be imputed to the Sheriff.

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There is no Difference between this Caſe, and that of bringing an Action againſt a Jury for maliciouſly, knowingly, and on Purpoſe to put the Party to Charges, finding a Matter ſpecially, whereby great Delay, and great Expences happened, before the Party could obtain Judgment; and yet no Man will affirm that an Action lies in that Caſe.

Beſides, in this Caſe the Damages are found entire; and if both Parts, *(viz.)* the not ſitting in the Houſe, and the Pains and Charges, are not both actionable Cauſes, the Judgment is for that Cauſe erroneous. It is to be preſumed, the Wages of Parliament will not be mentioned for Damages; for, in moſt Places, they are only imaginary; but if there were to be any Conſideration of them that would not alter the Caſe, for they were due as from the firſt Day, and ſo no Damage can be pretended on that Score.

5. A fifth Reaſon againſt this Action, is drawn from the Statute of 23 *Hen.* VI. It is admitted that, if an Action lay at Common Law, this Statute hath not taken it away, there being no Negative Words in it; but it is not likely the Parliament would have made that Law, if there had been a Remedy for the Party before: If the Courts of Juſtice had by the Common Law, Juriſdiction to examine Miſdemeanors concerning Returns, what needed the Parliament to have provided Law after Law, to give them Power therein; and, at laſt, to give the Party grieved an Action? Can any Man imagine, but that the Parliament took the Law to be, that the Party was without Remedy before? It is objected, that in thoſe Times it was reckoned a Damage to be retained to ſerve in Parliament, which is the Reaſon that no Man then did bring

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bring his Action againſt the Sheriff for a falſe Return: But this cannot be true, for the Statute calls him the Party grieved, and provides a Remedy for him; and we ſee by the many Statutes about thoſe Times, that it was a Miſchief very frequent, and there wanted no Occaſion for ſuch Actions; which extremely ſtrengthens the Argument, tha no ſuch Actions could be brought by the Common Law: By *Littleton*'s Rule it may be concluded, therefore the Action will not lie, for if it could have lain, it would have been brought before now:

Where a Sheriff miſtakes the Perſon in his Return, he incurs the Penalty of 23 *Hen.* VI. though it be without Malice; but the Courſe of the Parliament prevents his Suffering for this, by ſending for the Sheriff, and cauſing him to amend his Return; and from thenceforth the amended Return is the Sheriff's Return; and there is no Record that can warrant any Action to be brought for a falſe Return. The Sheriff is ſecure from any Action that can be brought upon that Occaſion; for which Reaſon there has of late Years been no Recovery upon the Statute, becauſe all Perſons chuſe rather to compel the Sheriff to amend his Return, that they may be admitted to ſit in the Houſe, than to take their Remedy upon the Statute; for no Man can recover on the Statute firſt, and afterwards have the Return amended; upon that Statute a Man cannot have a Remedy at Law; and alſo in Parliament; which ſeems to be wiſely provided, to prevent any Contrariety of Determinations.

6. The ſixth Reaſon againſt this Action, was, that the Sheriff is not permitted to take Security to ſave himſelf harmleſs in ſuch Caſes: And no Caſe can be put in our Law, where a Man is compelled to judge without Deliberation, and cannot take Security; and yet ſhall be liable to an Action.

It is objected by the other Side, that here is Malice found by the Verdict, and there can be no Danger or Inconvenience in puniſhing Malice: But Malice upon which they would have the Scales turn in this Place, is not a Thing demonſtrative, but interpretative, and lies in Opinion, and may give a Handle to any Man, to puniſh another by: This very Caſe ſhews that a good Man may reaſonably be afraid of the Event of his Defence in ſuch a Caſe; for, though the Matter went through a ſtrict Examination in Parliament, it was, at laſt, decided but by a few Voices, and no Obſervation made of the Sheriff's Miſcarriage there, though it appeared upon the Trial, that the Sheriff was guided by the Advice of his Friends, of Counſel, and of Parliament Men, who told him the only ſafe Courſe was to make a double Return; yet the Jury condemned him to pay 800 *l.* againſt the Expectation of the Court of *King*'s-*Bench*. The Judges declaring publickly, that they could not have given ſuch a Verdict, they could not concur with the Jury in their Opinion: The Words *falſo & malitioſe*, were grown Words of Courſe, and put in every Action; Juries many Times had no regard to them; and if they ſhould make the Words *falſo & malitioſe* ſupport an Action without a fit ſubject Matter, all the Actions of Mankind would be liable to Suit and Vexation.

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As to what is urged on the other Side, *That where Falſity, Malice, and Damage do concur, there muſt be a Remedy at Law:* This is generally true, but not univerſally; it does not hold in the Caſe of a Judge, of an Indictor, or a Witneſs, nor of Words that import no legal Slander, though they may bring Damage; and the Reaſons that exempt thoſe Caſes from the general Rule, have the ſame Force in this.

The Judges have ſometimes permitted a new kind of Action: But it has ever been upon great Deliberation, and where a general Convenience required it: *The Common Law* (it has been ſaid) *complies with the Genius of the Nation.* I do not underſtand the Argument: Does the Common Law change? Are we to judge of the Changes of the Genius of the Nation? Whither may general Notions carry us at this Rate? For my Part, I think, though the Common Law be not written, yet it is certain, and not arbitrary: We are ſworn to obſerve the Laws as they are, and I ſee not how we can change them by our Judgments. As to the Genius of the Nation? That is moſt proper to be conſidered of by the Parliament, who have the Power of altering the Laws.

In the Caſe at Bar, I look upon the Sheriff as a particular Officer of the Parliament, for the managing Elections, and as if he were not Sheriff: I look upon the Writ, as if it were an Order of Parliament, and had not the Name of a Writ: I look upon the Courſe of Parliament, which we pretend not to know, to be incident to the Conſideration of it: So that it ſtands not upon the general Notion of Remedy in the common Courſe of Juſtice. My Brother *Maynard* indeed tells us, We are not to think the Caſe too hard for us, becauſe of the Name of *Courſe of Parliament:* For Judges have puniſhed Abſentees from Parliament; they have determined what is a Parliament, what is an Act of Parliament, how long an Ordinance of Parliament ſhall continue, and may puniſh Treſpaſſes done in the very Parliament; which I ſhall not diſpute: But ſince I cannot find, that Courts of Juſtice have, at any time meddled with Caſes of this Nature, but upon Expreſs Power given them by Acts of Parliament, I cannot conſent to this Precedent: I am confident, when there is Occaſion, the Parliament will diſcern it; and make Laws to enlarge our Power; and I ſee no Harm in the mean time, if Sheriffs ſhould be ſafe from this new deviſed Action, which they call the Common Law: If they miſdemean themſelves, they are anſwerable to the Parliament, whoſe Officers they be; or may be puniſhed by the Statutes made for regulating Elections: I conclude therefore, that the Judgment was not warranted by the Rules of Law; that it introduced Novelties of dangerous Conſequence, and therefore ought to be reverſed.

The Judgment of the *King's-Bench*, as has been intimated already, was accordingly reverſed in the *Exchequer-Chamber*; and when

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when Sir *Samuel Barnardiſton* brought his Writ of Error in the Houſe of Peers, *Anno* 1689, to reverſe the Reverſal of the Judgment given in the *Exchequer*, the Houſe of Peers confirmed the Reverſal of the ſaid Judgment.

Five Lords only entered their Diſſent, for the following Reaſons.

Proteſt of ſome Lords, on the confirming the Judgment by the Peers.

1. Becauſe they apprehended it was a denying Sir *Samuel Barnardiſton* the Benefit of Law, which gives Relief in all Wrong and Injury: And though this be an Action of the firſt Impreſſion, yet there being a Damage to the Plaintiff, the Common Law gives him this Action to repair himſelf; and if it were not ſo, there would be a Failure of Juſtice, which cannot be admitted.

2. Becauſe the allowing this Reverſal tends to the giving Power and Encouragement to Sheriffs to make falſe and double Returns, by which Means the Right of Elections will be avoided, which tends to the packing of a Houſe of Commons, and may overturn the whole Frame of Government, and eſtabliſh what Religion and Government a packed Parliament think fit.

Bolton. *S. Stamford*
Macclesfield. *Herbert.*
P. Wharton.

Remarks on the Trial between Barnardiſton *and* Soame.

This Action was promoted by the whole Poſſe of Whigs, who had ſuch an Influence on Jurymen, in and about the City of *London*, in thoſe Days, that they could get what Verdicts they pleaſed; and if they had carried this Point, they apprehended, no Sheriff would have dared, for the future, to refuſe returning their Friends, where the Election was doubtful: And though, as the Laws then ſtood, it was the Opinion of the Judges, and of the Houſe of Peers afterwards, that the Sheriff was not liable to an Action on the Caſe for Damages, on making a falſe or double Return; yet the Statute of 7 and 8 *W.* III. *cap.* 7. hath ſince given the Party wronged double Damages, with Coſts of Suit, to be recovered in the Courts of Law, where a Sheriff, or other returning Officers, ſhall make a falſe or double Return.

Double Damages given on a falſe or double Return.

This Statute declares, That all falſe Returns made of a Member to ſerve in Parliament, are againſt Law; and if any Perſon ſhall return a Member to ſerve in Parliament, contrary to the Determination in the Houſe of Commons of the Right of Election, ſuch Return ſhall be adjudged a falſe Return, and the Party grieved (*viz.* The Party duly elected) by ſuch falſe Return, may ſue the Officers and Perſons making or procuring the ſame or any of them, at his Election, in any Court of Record, at *Weſtminſter-Hall*, and ſhall recover double Damages, with Coſts of Suit.

If any Officer ſhall wilfully, falſly, and maliciouſly return more Perſons than are required to be choſen by the Writ or Precept, the like Remedy may be had againſt him, and the Party or Parties that procure the ſame, or any of them, by the Party grieved.

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All Contracts, Promiſes, Bonds, and Securities, to be given to procure the Return of any Member to ſerve in Parliament, ſhall be adjudged void: And whoever makes ſuch Contract, or gives any Gift or Reward to procure ſuch falſe or double Return, ſhall forfeit 300*l.* one third to the King, another to the Poor of the Place, and the other to the Informer, with Coſts of Suit.

All Actions upon this Statute to be brought within two Years after Cauſe.

The Copy of the Clerk of the Crown's Book to be Evidence of a falſe or double Return.

An Action brought by a Member for Damages; miſlaid.

In the fifth Year of Queen *Anne*, one brought an Action on the Caſe, and declared he was elected Member of Parliament for a certain Borough, purſuant to the Queen's Writ, *&c.* and that the Defendant returned two other Perſons to be elected: And that he, the Plaintiff, petitioned the Houſe, and was adjudged by them to be duly elected, and his Name ordered to be inſerted in the Return, and the Name of another to be raiſed. After Verdict for the Plaintiff on *Not Guilty*, the Defendant moved in Arreſt of Judgment, That there was no Cauſe of Action, for it appeared, the Plaintiff had the Effect of his Election: He was returned and had his Place; there was nothing wanting, wherein he could pretend himſelf injured, but the Coſt he had been at; and as to them, it ought to be ſuppoſed, the Houſe conſidered them; And as the Plaintiff endeavoured to ſupport his Action by the aforeſaid Statute of 7 and 8 *William* III. Sir *Thomas Parker* argued for the Defendant, That the Declaration could not be taken to be founded on that Statute, becauſe the Fact was not laid agreeable to it, nor was it ſuch an Action as was intended by the Statute; for firſt, an Action grounded on a general Prohibition of a Statute, ought not to be for the Party only, but for the Crown and the Party, a Fine being due to the Queen for the Breach of the Statute, as well as Satisfaction to the Party injured.

Per Curiam, Where a Statute introduces a new Law, by giving an Action where there was none before, or by giving a new Action in an old Caſe, the Plaintiff need not conclude, *contra formam Statuti*; but if a Statute gives the ſaid Action, with the Difference of ſome Circumſtances, as double Damages, (as this Statute does) the Plaintiff muſt either conclude, *contra formam Statuti*, or make his Caſe ſo particularly within the Statute, that it may appear to be ſo; and becauſe he had not done it in this Caſe, Judgment was given for the Defendant. *Coudell v. John Hill*, 5 *Annæ B. R.* 2 *Salk.* 504. 505.

Debates

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Debates and Reſolutions of the Houſe of Lords and Commons, concerning their reſpective Privileges, in the Caſe of SHIRLEY and FAGG, *&c.* 1675. 27 *Car.* II.

1675. 27 Car. II. Shirley & Fagg.

THE Editor of theſe Proceedings has given us a Tranſcript of the Votes of the Houſe of Commons and their Journals, in relation to this Affair, with which he has filled a dozen Folio Pages. I ſhall not tire my Readers with Matters of Form, but give them ſuch a State of the Caſe, as I apprehend moſt acceptable to them.

The Caſe, a Conteſt between the two Houſes concerning their Privileges.

Doctor *Thomas Shirley* having brought an Appeal in the Houſe of Peers, againſt a Decree of the Court of Chancery, in Favour of Sir *John Fagg*, a Member of the Houſe of Commons; the Commons ordered Doctor *Shirley* to be taken into the Cuſtody of their Serjeant at Arms, for Breach of Privilege; with which the Deputy Serjeant acquainted the Doctor in the Inner Lobby of the Houſe of Lords: This occaſioning ſome Diſturbance at the Door of the Houſe of Peers, the Lord *Mohun*, being acquainted with the Matter, forcibly took the Warrant from the Deputy Serjeant, and Doctor *Shirley* made his Eſcape.

The Commons, being acquainted with this Tranſaction, ſent to demand Juſtice of the Houſe of Peers againſt the Lord *Mohun*; but were anſwered, That that Lord had done nothing but his Duty: Whereupon the Commons reſolved, That whoever ſhould appear at the Bar of the Houſe of Lords, to proſecute a Suit againſt any Member of the Lower Houſe, ſhould be deemed an Infringer of the Privileges of Parliament. On the other Hand the Houſe of Peers reſolved, That it was the undoubted Right of the Lords in Judicature, to determine, in Time of Parliament, Appeals from inferiour Courts, though the Members of either Houſe were concerned, that there might not be a Failure of Juſtice.

The Commons perſiſted, That it was an undoubted Right of their Houſe, that none of their Members be ſummoned to attend the Lords; and afterwards proceeded to that unprecedented Reſolution, *That there lay no Appeal to the Juriſdiction of the Lords in Parliament, from Courts of Equity*; and took into Cuſtody Serjeant *Pemberton*, and the reſt of the Lawyers, who were Counſel in the Cauſe, and ſent them to the *Tower*, with their own Member Sir *John Fagg*, for ſubmitting to the Orders of the Houſe of Peers.

The Counſel impriſoned by the Commons.

At a Conference of both Houſes on this Difference, the Lords inſiſted, That the Order of the Commons for impriſoning the Lawyers, was illegal and arbitrary, and an Indignity offered to the King, in that his higheſt Court of Juſtice, the laſt Reſort in all Cauſes; that it was an Uſurpation, and a Breach of the Privileges of the Peers, to have their Orders controverted and obſtructed by the Lower Houſe, who were no Court, and had not Authority to adminiſter an Oath: That it was an Invaſion of the Subjects Liberties, and a Breach of *Magna Charta*, to impriſon or reſtrain any Perſon of his Liberty, but by due Proceſs of Law: That their Lordſhips therefore had ſet at Liberty the ſaid Counſellors, and prohibited the Lieutenant of the *Tower*, and other Keepers of Priſons, and all other Perſons, to detain and moleſt them.

Set at Liberty by the Lords.

The Commons anſwered, That it was no Indignity to his Majeſty, for the Commons to puniſh a Commoner by Impriſonment, who violated their Privileges; that their Lordſhips claiming to be the ſupreme Court, and aſſerting his Majeſty to be higheſt in that Court of Judicature, was a Diminution of the King's Dignity, who was higheſt in his Royal Eſtate, in full Parliament: That their Lordſhips alſo did highly intrench on the Rights and Privileges of the Houſe of Commons, by denying them to be a Court, or to have any Authority or Power of Judicature, which, if admitted, would leave them without any Power or Authority to preſerve themſelves: And as to their having violated *Magna Charta*, &c. neither the great Charter, or any other Law, took away the Laws and Cuſtoms of either Houſe of Parliament; nor could the Commons find by *Magna Charta*, or any other Law, or antient Cuſtoms of Parliament, that their Lordſhips had any Juriſdiction, in Caſes of Appeals from the Courts of Equity; and that the Enlargement of thoſe Perſons, impriſoned by the Order of the Houſe of Commons, and the threatning all Officers and other Perſons, who ſhould impriſon or detain them, was a Breach of the Privileges of the Houſe of Commons; and therefore they had cauſed the ſaid Counſellors, *&c.* to be retaken by their Serjeant at Arms, and committed to the *Tower*.

The Counſel recommitted by the Commons.

The King finding theſe Diſputes run very high, ordered both Houſes to attend him at *Whitehall*, and in his Speech told them, He was ſorry their Enemies had found Means to create theſe Diviſions among them: That he thought the beſt Means of compoſing theſe Differences, would be by free Conferences, where they might convince each other by their Reaſons, or enable him to judge rightly of their Differences; but he was determined not to ſuffer theſe Diſputes to grow to Diſorders; nor, while they were debating about their Privileges, permit his own to be invaded.

The King's Speech to the Houſes on this Conteſt.

The Lords afterwards ſent the Uſher of the Black Rod to the *Tower*, to demand the four Lawyers; and Sir *John Robinſon* the Governour refuſing to releaſe them, they addreſſed the King to remove him from that Poſt; but his Majeſty anſwered, He had conſidered the Circumſtances of the Matter, and was not ſatisfied how he could with Juſtice remove him.

The Governor of the Tower *refuſes to releaſe the Counſel.*

The Lieutenant of the *Tower* was afterwards ſerved with Writs of *Habeas Corpus*, to bring the four Lawyers before the King and Parliament: On the contrary, the Commons

Diſobeys a Habeas Corpus.

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promiſed the Lieutenant their Protection; and reſolved, That no Commoner, committed by them for Breach of Privilege, ought by *Habeas Corpus*, or any Authority whatſoever, to be brought before the Houſe of Peers; and that the Order of the Peers, for iſſuing out the Writs of *Habeas Corpus*, was illegal. Whereupon his Majeſty, finding there was no Probability of ſeeing the Diſpute ended amicably, came to the Houſe the 9th of *June* and prorogued the Parliament to the 13th of *October*; then the Priſoners were releaſed of Courſe.

The Commons protect him in it.

The Parliament prorogued.

The Parliament meeting again, in purſuance of their Prorogation, the 13th of *October*, the King made a Speech to both Houſes, wherein he ſaid, He was more than uſually concerned for the Event of that Seſſions; he did not deſire to remember the Cauſes of the late Prorogation, and hoped no body elſe would, unleſs to learn from thence, how to avoid the like Occaſions of Debate; deſired they would conſider how fatal the Conſequence might be, and how little Benefit was like to redound to the People by it.

Another Speech of the King's on this Occaſion.

The Diſpute revived.

However the Diſpute between the two Houſes, in the Caſe of *Shirley* and *Fagg*, was again revived this Seſſion; for *Shirley* having continued his Proceſs, the Commons again voted it a Breach of Privilege, and ordered *Fagg* to make no Defence at the Lord's Bar; and having agreed to a Conference with the Lords on this Subject; the 19th of *November* they delivered their Lordſhips a Paper to the following Tenor *(viz.)* That the King having recommended to them the avoiding this Difference, and if that could not be prevented, to defer the Debate till the publick Bills, for the Good and Safety of the Kingdom, were perfected; the Commons thought it a great Misfortune, that, contrary to that excellent Advice, a Day had been appointed by the Lords, for hearing the Cauſe between *Shirley* and *Fagg*, and propoſed the putting off that Matter for a ſhort Time; to which their Lordſhips ſhewing no Inclination, the Commons the next Day reſolved, That whoever ſhould proſecute an Appeal before the Lords, againſt any Commoner, from any Court of Equity ſhould be deemed a Betrayer of the Rights and Privileges of the Commons of *England*, and be proceeded againſt accordingly; and ordered this Reſolution to be poſted up in the Lobby, *Weſtminſter-Hall*, and other publick Places: Whereupon the Lords reſolved, That the Paper poſted up againſt the Judicature of the Houſe of Peers, was illegal, unparliamentary, and tending to the Diſſolution of the Government; and ſeveral violent Speeches were made in the Houſe of Lords, particularly by the Earl of *Shaftesbury*, who declared, "That THEIR ALL WAS AT "STAKE; that though he had all the Duty "imaginable for his Majeſty, and ſhould give "Way to any Thing almoſt, that he ſhould "think of Importance to his Affairs; yet, in "this Caſe, it being to alter the Conſtitution "of the Government, which was not only "their Lordſhip's Concern, but the Con-"cern of the pooreſt Man in the Kingdom, "he would be bold to ſay, The King could "give none of them a Recompence for it.

e Earl of ftes- y's ech on this aſion.

"*What are empty Titles? What is preſent* "*Power, to a great Eſtate, wherein I have* "*no Property fixed? It is the maintaining* "*the Conſtitution of the Government, that ſe-* "*cures your Lordſhips, and every Man elſe,* "*in what he hath.* The greateſt Title, with "the greateſt preſent Power and Riches, is "but a mean Creature, and maintains thoſe "in abſolute Monarchies, no otherwiſe than "by ſervile or low Flatteries, and upon un-"certain Terms. My Lords, would you "be in Favour with the King? It is a very "ill Way to it, to put yourſelves out of a "Capacity to be conſiderable in his Service. "I do not find in Story, or in modern Ex-"perience, but that it is better, and a Man "is much more regarded, that is ſtill in a "Capacity to ſerve his Prince and Country, "than he that hath wholly deprived himſelf "of All, for his Prince's Service: I do there-"fore declare, that I will ſerve my Prince as "a Peer, and will not deſtroy my Peerage to "ſerve him.

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This Speech inflamed the Houſe of Peers to that Degree, that it was moved on the ſudden to addreſs his Majeſty to diſſolve the Parliament, and call another (the very point Lord *Shaftesbury* aimed at;) and being put to the Vote, it was carried in the Negative, only by two Voices (50 againſt 48:) However the King, finding it impoſſible to accommodate the Differences between the two Houſes, prorogued the Parliament on the twenty ſecond of *November*, to the 15th of *February* come twelve Months, that they might have time to cool before another Seſſion.

Another long Prorogation.

I ſhall conclude this Affair with the Proteſt of thoſe Lords, who were for addreſſing the King to diſſolve the Parliament; for which they gave theſe Reaſons:

Proteſt of the Lords, who were for diſſolving the Parliament.

1. We conceive that it is according to the antient Laws and Statutes of this Realm, that there ſhould be frequent and *New Parliaments.*

2. It ſeems not reaſonable that any particular Number of Men ſhould, for many Years, engroſs ſo great a Truſt of the People, as to be their Repreſentatives in the Houſe of Commons; and all the other Gentry and Members of Corporations of the ſame Degree and Quality, ſhould be ſo long excluded. Neither is it advantageous to the Government, that the Counties, Cities and Boroughs, ſhould be confined for ſo long a Time to ſuch Members; the mutual Correſpondence and Intereſts of thoſe who chuſe and are choſen, admitting of great Variations in length of Time.

3. The long Continuance of ſuch as are entruſted for others, and who have ſo great a Power over the Purſe of the Nation, muſt naturally endanger the producing Factions and Parties, and the carrying on of particular Intereſts and deſigns, rather than the publick Good.

And we are the more deſirous of ſuch an Addreſs, on account of this unhappy Breach between the two Houſes, for which the Houſe of Peers have not given the leaſt Occaſion, having done nothing but what their Anceſtors and Predeceſſors have done, and what is

according

1675. 27 Car. II. according to their Duty, and for the Intereſt of the People: And it is in our Opinion become altogether impracticable for the two Houſes, as the Caſe ſtands, jointly to purſue thoſe great and good Ends for which they were called. 1675. 27 Car. II.

Signed by *Buckingham*, *Shaftesbury*, and twenty more.

The Caſe of FRANCIS JENKES, Committed to the *Gatehouſe* by the Privy Council, for ſeditious Words, 28 *June*, 1676. 27 *Car.* II.

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Jenkes's Caſe.

THIS is no more than the Complaint of Francis Jenkes, *and his Friends, for his being committed by the Privy Council, for Words the Brethr en apprehended to be innocent, and his not being admitted to Bail ſo ſoon as he expected; in which Relation (told by themſelves) no doubt, they have been partial enough. The Fact for which he was committed appears by the following Warrant* (as recited by them.)

The Warrant for his Commitment.

" Whereas it appears to his Majeſty in Council, by the Examination of Sir *Thomas Gold* and Sir *John Shorter*, Knights, Sheriffs of the City of *London*; *John Wells*, Common-Crier of the ſaid City, and *John Green*, one of the Attornies of the Lord-Mayor's Court, taken upon Oath before the Lord Chief Juſtice *Rainſford*, that *Francis Jenkes*, of the ſaid City, Linen Draper, did, on the 24th of this inſtant *June*, at a Common Hall then aſſembled at the *Guild-hall* of the ſaid City, for chuſing Officers for the enſuing Year, in a moſt ſeditious and mutinous manner, openly move and ſtir the Perſons then preſent, that before they did go on to the Choice of new Officers (which was the only occaſion of that Aſſembly) they ſhould go to the Lord Mayor, and deſire him to call a Common Council that might make an Addreſs to his Majeſty, in the Name of the City, to call a new Parliament. And whereas the ſaid *Francis Jenkes* being now called in, and heard before his Majeſty in Council, was ſo far from denying, or extenuating his Offence, that he did, in a preſumptuous and arrogant Manner, endeavour to juſtify the ſame.

" Theſe are therefore to command you, to take into your Cuſtody the Body of the ſaid *Francis Jenkes*, herewith ſent you, and him to keep ſafely, untill he ſhall be delivered by due Courſe of Law, for which this ſhall be your Warrant.

Dated at the Council-Chamber at *Whitehall* the 28th Day of *June*, 1676, and ſigned by twenty of the Lords of the Privy Council.

Bail deferred

Mr. *Jenkes* and his Friends relate, that they attended Mr. Secretary *Williamſon* with ſufficient Bail the next Day after the Commitment, as they did, afterwards, the Lord Chief Juſtice *Rainsford* and the Lord Chancellor; but they all gave them dilatory Anſwers.

Then they applied themſelves to the Juſtices of Peace of *Weſtminiſter*, at their Seſſions; who told them there was no Precedent of a Perſon's being bailed by Juſtices of Peace, who were commited by the Privy Council.

They applied again to the Lord Chancellor, who told them, A little Submiſſion, in a proper Place, would do, (*viz.* a Petition to the Council): But they found he had a Mind to come out with a high Hand.

He is after 2 Months, admitted to bail

After the Priſoner had lain about two Months in the *Gatehouſe*, the Council voluntarily admitted him to Bail. I cannot learn there was any further Proſecution againſt him for theſe Miſdemeanors, of ſeditiouſly ſtirring up the Citizens to petition for a Parliament, and his inſolence to the Privy Council. The Man appears to have been one of Lord *Shaftesbury*'s Faction, and was afterwards tried for a Riot in *Guild-hall*, in the Year 1683, as will appear in a future Trial.

And though it be looked upon by the Brethren, to be ſo great a Piece of Oppreſſion not to bail one immediately, who has been committed for Sedition, and a Contempt of the Privy Council; yet we find no Court or Magiſtrate will bail one committed for a Contempt by the Houſe of Commons: And whether the Privy Council have not as much Law, for committing and detaining ſuch a Perſon in Priſon, as the Commons, may be a Moot-Point.

The Caſe of ANTHONY Earl of SHAFTESBURY, on a Writ of *Habeas Corpus*, argued in the Court of *King's-Bench*, the 27th and 29th of *June*, 1677. *Trin.* 29 *Car.* II.

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Lord Shaftesbury's Caſe.

Habeas Corpus, *the Return.*

THE Earl was brought into Court on the Return of an *Alias Habeas Corpus*; the Tenor whereof was, That the ſaid *Anthony* Earl of *Shaftesbury* was committed to the *Tower* on the 16th of *February*, 1676, by Order of the Houſe of Lords, *for High Contempts committed againſt that Houſe*; to remain in Cuſtody during his Majeſty's Pleaſure, and the Pleaſure of that Houſe.

The Return being filed on the Motion of the Earl's Counſel, they were ordered to attend the Judges and the Attorney-General, with their Exceptions to it; and then the Earl

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Earl was remanded: And on the 29th the Exceptions to the Return were argued.

Arguments for diſcharging or bailing the Earl.

The Earl's Counſel inſiſted, That the Cauſe of Commitment was inſufficient, becauſe it was too general and uncertain; and cited *More* 893, *Vaughan* 140, and 1 *Rolls* 218. And that the Commitment of the Jurors for acquitting *Penn* and *Mead*, *contra plenam & manifeſtam evidentiam*, was reſolved to be too general; becauſe the Evidence ought to have appeared as certainly to the Judge of the Return, as it appeared before the Judge authorized to commit; and that the Commitment being by the Houſe of Lords made no Difference: This Court had often determined concerning Privilege of Parliament: That if the Parliament was diſſolved, there was no Queſtion but the Priſoner might be diſcharged on a *Habeas Corpus*; and yet then the Court muſt examine the Cauſe of Commitment, and conſequently might examine a Parliamentary Matter: That the Commitment during the King's Pleaſure, and the Pleaſure of the Houſe alſo, was illegal; becauſe the Priſoner could not apply himſelf in ſuch a Manner as to obtain his Diſcharge.

That though the Houſe of Lords was the Supreme Court, yet their Juriſdiction was limited by Common and Statute Law: That at a Conference held between the Lords and Commons, 3 *April*, 4 *Car.* it was agreed, That no Freeman ought to be committed by the King, or Privy Council, *or any other* (in which the Houſe of Lords were included,) unleſs ſome Cauſe of the Commitment were ſet forth; and ſo the Law was declared to be in the Petition of Right.

That where a Subject was reſtrained of his Liberty, this was the proper Court to apply to; and this Court had a Supreme Power, as to this Purpoſe, over all Courts: On a *Habeas Corpus* iſſuing from hence, the King ought to have an Account of his Subject; and if the Commitment by the Houſe of Lords was illegal, this Court was obliged to diſcharge the Priſoner, as well as if he had been illegally impriſoned by another Court: That the Earl had been impriſoned five Months already; and it was falſe Impriſonment, not only where the Commitment was unjuſt, but where it was of too long a Duration. The Parliament was adjourned; and as the Law was now taken to be, might continue adjourned ten or twenty Years, and make the Impriſonment perpetual: And that this was not an ordinary Adjournment, it being entered on their Journal, that they ſhould not meet at the Day of Adjournment; but be adjourned or prorogued to another Day, if the King did not ſignify his Pleaſure to the contrary by a Proclamation.

Arguments againſt diſcharging or bailing the Earl.

The King's Counſel on the other Side admitted, That if this Commitment had been by an inferiour Court, it could not have been maintained; but it being by a Court that was not under the Controul of the *King's-Bench*, and that Court ſitting at this Time, it was otherwiſe: That this Caſe differed from all others that had been mentioned, in two Circumſtances, 1, The Perſon was a Member of the Houſe by which he was committed. 2. That Court being ſuperior to this, although the Contempt had been particularly expreſſed: And of what Opinion ſoever this Court had been as to the Nature of it, they could not have diſcharged the Earl, and have taken upon them a Juriſdiction over the Houſe of Peers: That the Words *during Pleaſure* were no more than what the Law would have ſupplied; and if Judgment was given that one be impriſoned during the King's Pleaſure, his Pleaſure ought to be determined by a Pardon. They urged further, That it would be very inconvenient, if the *King's-Bench* could, during a Seſſion of Parliament, take Cognizance of the Matter; for then this Court might judge one Way, and the Houſe of Peers another. It had been reſolved by the whole Court, in the Caſe of *Barnardiſton* and *Soame*, that an Action of a double Return could not be brought in the Court of *King's Bench*, 'till the Commons had determined the Right of Election, leſt there ſhould be different Judgments given in the ſame Caſe: That when a Judgment of the Houſe of Lords came down to that Court, they were obliged to execute it, and could never examine or correct their Judgments: That though Impriſonments for Contempts had been frequent by the one and the other Houſe, no Perſon ſo committed ever ſought his Enlargement in the *King's-Bench* before. This Court, indeed, was obliged to grant an *Habeas Corpus*; but it appearing upon the Return, that the Cauſe belonged *ad aliud examen*, they ought to remand the Party.

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The Judges declare they have no Power to bail or diſcharge him, on a Commitment by the Lords, during the Seſſion.

Then Mr. Juſtice *John* delivered his Opinion *ſeriatim*, That ſuch a Commitment by another Court would have been ill; but that the Courts of *Weſtminſter* had never taken Cognizance of Privilege of Parliament, unleſs where it was an Incident to the Caſe before them, which was of their Cognizance: But the direct Point now before them, was a Judgment of the Houſe of Lords, and this Court could not judge of any Law, Cuſtom, or Uſage of Parliament. And as to the Continuance of the Impriſonment, the King might pardon the Contempt under the Great Seal; or diſcharge the Impriſonment under his Privy Seal: He would not ſay what might have been done, if the Seſſions had been determined; but this Court, as the Caſe was, could neither diſcharge or bail the Earl.

Mr. Juſtice *Wild* alſo delivered his Opinion, That they could not meddle with the Tranſactions of the Houſe of Peers during a Seſſion of Parliament, which was not determined; and therefore the Certainty or Uncertainty of the Return was not material; but if the Seſſion had been determined, his Opinion would have been, the Earl ought to be diſcharged.

Sir *Richard Rainsford* declared, That this Commitment was an Execution of a Judgment given by the Lords for a Contempt; and that if he ſhould be bailed, he would be delivered out of Execution; and that for a Contempt in the Face of the Court, there was no other Judgment or Execution: That this Court had no Juriſdiction, as the Caſe ſtood, and therefore the Earl ought to be remanded; but

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but waived giving his Opinion, Whether it would not have been otherwiſe, in Caſe of a Prorogation.

Mr. Juſtice *Twiſden* alſo was of Opinion, That the Earl ought to be remanded; and he was accordingly ſent back to the *Tower*, where he remained ſeven Months longer, and then was diſcharged on making his Submiſſion in the Houſe of Peers. His Offence was, his affirming, That the Houſe was diſſolved by having been prorogued for above a Year; in which Notion the Duke of *Bucks*, the Earl of *Salisbury*, and the Lord *Wharton*, concurred, and were all ſent to the *Tower* for aſſerting it; but the reſt acknowledging their Error, were ſoon diſmiſſed; while *Shaftesbury* for perſevering in that Notion, drew upon himſelf the Reſentment of the Court, as well as of the Houſe, and was continued a Year in Priſon.

Remarks on the Lord Shaftesbury's Caſe.

This Caſe of Commitments by either Houſe, ſeems now to be fully ſettled: Where either Houſe commits any of their reſpective Members, the *King's-Bench* will neither diſcharge or bail them during the Seſſion; but on a Prorogation, or Diſſolution, the Perſons ſo committed are diſcharged of courſe.

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The Trial of PHILIP Earl of PEMBROKE and MONTGOMERY for *Murder*, before the whole Houſe of Peers (it being during a Seſſion of Parliament) in *Weſtminſter-Hall*, the 4th of *April*, 1678. 30 *Car.* II.

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Lord Pembroke's Trial.

The Charge.

THE Indictment charges this Noble Lord with aſſaulting, and knocking down, *Nathanael Cony*, Gent. on the 4th of *February* (then laſt paſt) and with ſtriking, bruiſing, and kicking him after he was down, of which Blows and Bruiſes he languiſhed until the Tenth of the ſame Month, and then died: And ſo the ſaid *Philip* Earl of *Pembroke*, &c. did felonioufly, wilfully, and of his Malice afore-thought, kill and murder the ſaid *Nathanael Cony*.

The Evidence for the King.

The King's Counſel having opened the Indictment, the Witneſſes were produced; and firſt Mr. *Goring*, who depoſed, that on *Sunday*, the 3d of *February* laſt, he had been drinking with Mr. *Cony*, the Deceaſed, in the City, where they ſtaid very late; however, in their way Home they called at *Long*'s Tavern in the *Hay-Market*, to take another Bottle; and, as they were ſtanding at the Bar, the Lord *Pembroke* came out of a lower Room, and invited Mr. *Cony* (whom he knew) and the Deponent to come in: That, after ſome Time, there aroſe a Diſpute between the Lord *Pembroke* and the Deponent, about their Families and Play, wherein the Noble Lord, thinking himſelf injured, threw a Glaſs of Wine in the Deponent's Face; and then my Lord roſe up and drew his Sword, and the Deponent laid his Hand upon his Sword; but Captain *Savage* ſtepped between them, and with the Drawer, ſhoved the Deponent out of the Room, at which Time he heard a Noiſe behind him, and ſaw my Lord making towards Mr. *Cony*; That the Deponent after he was out miſſing his Friend, and having left his Sword, Hat and Wig, in the Room, made a Noiſe at the Door to get in again, and the Landlord riſing out of his Bed, and coming down, the Deponent deſired he might have his Things again, and go in and ſee what they had done with Mr. *Cony*; for he feared he was in Danger: But the People of the Houſe perſuaded him to go into another Room, and they would bring Mr. *Cony* to him; and after he had waited half an Hour, they came and told the Deponent he might go in now if he pleaſed, and going in he found Mr. *Cony* lying upon the Chairs, and no body elſe in the Room: That he took a Candle to ſee if he was wounded, endeavouring to awake him, but could not; and the Drawer ſaid he was only dead-drunk, and would come to himſelf: That thereupon he directed the Drawer to get ſome Blankets and Pillows, and ſet ſome Chairs, to make the Place broader, and watch with him 'till he waked, which the Drawer promiſed to do: That going to viſit Mr. *Cony* on *Tueſday*, he told the Deponent he had been very much abuſed in my Lord's Company; my Lord *Pembroke* threw him down, and ſomebody trod upon him, and kicked him, and he expected Satisfaction of my Lord: He hoped the Deponent would carry his Lordſhip a Challenge: That asking the Deceaſed who trod upon him, he anſwered, he knew not, for he was in a Swoon; it was either my Lord *Pembroke* or ſome of his Creatures for him: That he complained of his Belly, Sides, and and Shoulders, and ſaid my Lord *Pembroke* had done him the Injury in throwing him down.

Mr. *Richard Savage* depoſed, he was with my Lord *Pembroke*, at *Long*'s Tavern in the *Hay-Market*; and his Lordſhip, hearing Mr. *Cony* make a great Noiſe at the Bar, went out, and invited him and his Friend, Mr. *Goring*, into his Room: That after ſome Time Mr. *Goring* uſed impertinent Language, and told his Lordſhip he was as good, or a better Gentleman than himſelf; whereupon his Lordſhip threw a Glaſs of Wine in *Goring*'s Face, and drew his Sword, and *Goring* being about to draw his, the Deponent took it from him, and broke it, and perſuaded his Lordſhip to put up his Sword; but, to prevent more Words, the Deponent ſhoved Mr. *Goring* out of the Room: That while he was thruſting *Goring* out, he heard a Buſtle behind him, and turning about, ſaw the Lord *Pembroke* ſtrike the Deceaſed, who immediately fell down, and then my Lord gave him a Kick: That finding the Deceaſed did not ſtir, my Lord and the Deponent took him off the Ground, and laid him on the Chairs, and covered him up warm; that they chafed his Temples, and he

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opened his Eyes, but did not ſpeak: He did not ſee his Lordſhip kick the deceaſed more than once, and that with no great Force.--- That he went two Days after to ſee Mr. *Cony*, and he asked the Deponent if my Lord ſtruck him, for he did not know; but finding himſelf much in Pain, he thought he had fallen, partly through Drink, and partly through Fits he uſed to have.

Mr. *Shelly* depoſed he was in the Room when Mr. *Cony* and Mr. *Goring* came in, and they were both in Drink: That *Goring* propoſed Play, and my Lord ſaid he would throw with him for 500*l.* and was ſending for the Money; but then *Goring* would not play; and his Lordſhip ſaying he believed he was an idle Fellow, *Goring* replied, his Name was a better Name than his Lordſhip's, and himſelf a better Gentleman: Whereupon my Lord threw a Glaſs of Wine in his Face, and they both drew their Swords; but *Savage* ſtepped between, and put *Goring* out of the Room; and my Lord deſiring *Cony* to go out with his Friend, *Cony* ſaid, he did not know why his Friend was put out; whereupon my Lord knocked him down, and lifted up his Leg pretty high, as if he would have kicked him; but he could not ſay he kicked him: He ſaw them afterwards lay *Cony* upon the Chairs, and he was ſenſeleſs; and he believed his being in Drink, as well as the Blow, was the Occaſion of his Fall; for he ſaw the deceaſed twice afterwards, and he ſaid he had a Fit, and did not impute any Thing to the Lord *Pembroke*. Captain *Fitz-Patrick* gave the ſame Evidence, concerning the Deceaſed's being knocked down by the Lord *Pembroke*, and left ſenſeleſs upon the Chairs, as the former Witneſſes had done; but was not certain his Lordſhip kicked the Deceaſed.

Doctor *Bruce* depoſed, that coming to viſit Mr *Cony*, the Day after the Accident, he found him in ſuch extream Pain between his Shoulders, that he could not bear to be touched: That the *Wedneſday* following he complained of Pains in his Belly; but they could ſee no Blemiſh, either by diſcolouring or bruizing, and ſo left him then in a hopeful Way of Recovery.

Mr. *Hemes* depoſed, that he was ſent for to Mr. *Cony*, the Day after the Accident, and he complained of Pains all over his Body, but eſpecially on his Shoulders and Buttocks; and the Doctor applying Plaiſters, and ordering him to be anointed, he could hardly bear they ſhould touch him; but they ſaw no Swelling or Bruiſe: He complained of an inward Soreneſs in his Belly from firſt to laſt, and being opened after he was dead, they found a great deal of Blood gathered together in the lower Part of his Belly, of a blackiſh lived Colour.

Mr. *Jackſon* depoſed, That the Deceaſed was of a ſtrong, healthful Conſtitution, and not ſubject to any dangerous Diſtemper: That he went to viſit him the *Wedneſday* after the Accident, and he told the Deponent he had been troubled with very unuſual Swoonings, and at that Time fell into a Fit: That he complained of great Pain in his Belly, and ſaid it was occaſioned by ſome ill Uſage he had lately received: He had been drinking with my Lord *Pembroke*.

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Alice Avery (Mr. *Cony*'s Nurſe) depoſed, That he came Home about Eight o'Clock on the *Monday* Morning, and was very ill, he could ſcarce ſtand; ſaid he was very ſore, and full of Pain, and had been in ſome Company, where he had received a great deal of Wrong: That he had been beaten and kicked more than ordinary, and was never ſo abuſed in his Life: And about two Hours before he died, he wiſhed to God he had never been in my Lord *Pembroke*'s Company; for he did think in his Conſcience my Lord had been the Death of him.

Mr. *William Brown* depoſed, He was upon the Coroner's Inqueſt the Day after Mr. *Cony* died: That his Body was prodigiouſly ſwelled: On his right Breaſt there was a great black Bruiſe, and on the left Side a great black Spot: That they deſired to ſee his inward Parts, and found the Caul waſted away, and in the Bottom of his Belly a great Quantity of ill-looked Blood.

Richard Wheeler alſo depoſed, He was of the Inqueſt, and obſerved a great Bruiſe on the right Breaſt of the Deceaſed, and another on the left Side of his Belly: That the whole Body was very much ſwelled, and Blood ſettled in the Bottom of his Belly.

Charles Cony (Brother to the Deceaſed) depoſed, That, viſiting his Brother the Day after the Accident, and underſtanding the Lord *Pembroke* knocked him down, they both concluded how the Misfortune came, though his Brother (the deceaſed) could not remember what was done; and therefore to know the Truth, they ſent for the Drawer, who aſſured them my Lord never ſtruck him: That his Brother was in ſuch Pain, he could not bear to be touched; but on ſome Applications on *Tueſday*, he was pretty much at Eaſe: He roſe on *Wedneſday*, and on *Thurſday* was ſo well, that he dined with ſome Friends in his Chamber, and on *Saturday* was ſo well, that he would have gone Abroad; and the Deponent did not think he would have died, till about two Hours before he expired; and when the Report of my Lord's having abuſed him was mentioned, he was diſpleaſed at it.

Mr. *Jackſon*, the Surgeon, depoſed further, That they found an extraordinary Quantity of extravaſated Blood at the Bottom of his Belly when it was opened; and he believed it to be occaſioned by ſome Violence that was done him.

The Priſoner's Witneſſes produced in his Defence.

Then the Priſoner's Witneſſes being called, Doctor *Conqueſt* depoſed, That the firſt Time he attended the Deceaſed, as a Phyſician, was about three Months before this Accident, and then he was ſent for to him at a Tavern, where the deceaſed had a fainting Fit, and lay dead for half an Hour: That the next Day he attended the Deceaſed at his Lodgings, and found him very ill, and melancholy, inſomuch that he weeped, and ſaid that he found ſo great an Oppreſſion at his Heart, that he could not ſpeak; however the Deponent could not diſſuade him from going abroad that Day, and he went out, and drank

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drank very hard: That the Deponent had been ſent for twenty Times to recover him out of his Fits; but he would take no Advice: That he acknowledged he had been a hard Drinker of Wine, and ſtrong Waters upon it, which the Deponent believed cauſed the Stagnation of Blood in his Body, and might occaſion the fainting Fits; and he believed his Entrails had received no Prejudice by Kicks or Bruiſes; becauſe he ſaw him take two or three Clyſters after this Accident: That the very *Saturday* Night before he died he drank three whole Tankards of cold ſmall Beer, which gave him a violent Fit of the Gripes; and the Deponent being ſent for again, he found the Deceaſed had vomited all Night, and was dying away, and having brought him to himſelf again, he ſtill ſwore he would have more ſmall Beer: That the Deponent ſaw him opened, and there was clotted Blood among the Bowels, the breaking out of which he aſcribed to the great Quantity of ſmall Beer the Deceaſed had drunk, and the Gripings that followed; and the Bowels were none of them touched.

Doctor *Lower* depoſed, That he attended the Deceaſed with Dr. *Conqueſt* after this Accident; and Mr. *Cony* told him, his Fits came upon him ſuddenly, by Sickneſs upon his Stomach, and ſaid nothing of any Bruiſe or Hurt: Nor had the Deponent any Reaſon to ſuſpect that any ſuch Thing was the Cauſe of his Illneſs; for he had no Symptom of a Fever, either in Tongue, Pulſe, or Urine; which would have been, if the Diſtemper had been owing to any Thing of that kind.

Mr. *Raven*, the Surgeon, depoſed, That he viewed the Body carefully, and found no Blackneſs, or Bluneſs, or Marks of Bruiſes: That when the Body was opened, there iſſued ſome clotted Blood: The Caul was conſumed; the Heart as looſe as a Rag, and the Lungs ſtuck to each Side of his Ribs: That in all natural Deaths there is extravaſated Blood in the lower Belly; and the great Quantity that was there, he imputed to his drinking ſmall Beer after ſtrong Liquors, which ſet him a vomiting by the Violence whereof the Blood was thrown down into the Belly.

Viner, *Long*'s Drawer, depoſed, That he came into the Room when my Lord *Pembroke* ſtruck the Deceaſed (though he denied, when he was ſent for by the Deceaſed, and his Brother, that my Lord ſtruck him:) That afterwards they laid the Deceaſed upon Chairs, and he fell off ſeveral Times, and the Deponent helped him up again: That, when he came to himſelf, he ſaid he was very ſick, and had ſeveral fainting Fits; and that at Seven in the Morning they ſent him to his Lodgings in a Chair.

The King's Counſel's Obſervations on the Evidence.

The King's Counſel, in their Obſervations on the Evidence, ſaid, There were two ſorts of Malice, the one expreſs, *i. e.* When a Man can be proved to have had an ill Will before-hand to the Perſon killed (which they did not pretend to be in this Caſe:) The other ſort of Malice, which alſo in Law gives the Denomination of Murder to the killing of a Man, is Malice implied; which is, when a Man, without any Provocation given by the Party ſlain, ſhall bring another by Violence to his Death: For the Law ſuppoſes, that no Man, without Provocation, would kill his Brother, unleſs he had Malice to him before-hand; and this was the Malice they charged the Priſoner with, *That he killed the Deceaſed without Provocation.*

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This noble Lord ſeems to reſt his Defence on the Evidence that had been given for him; I do not perceive he made any Remarks on it: Whereupon the Lords withdrew to their Houſe above, and after two Hours Debate among themſelves, coming down into the Hall again, the Lord High Steward numbered the Voices, and declared, That Six of their Lordſhips had found the Priſoner Guilty of Murder, Eighteen had found him Not guilty, and Forty had found him Guilty of *Man-ſlaughter*: And it being demanded what he could ſay why Judgment ſhould not paſs upon him, to die according to Law? He claimed the Privilege of his Peerage (which is equivalent to a Commoner's Claim of Clergy:) Whereupon the Lord High Steward told him, That as Clergy was allowed to a Commoner in ſuch Caſes, on his reading, and being burnt in the Hand; ſo a Peer, convicted of ſuch Felony, was to be delivered without either: But his Lordſhip would do well to take Notice, that no Man could have the Benefit of that Law more than once.

Convicted of Man-ſlaughter.

Has the Benefit of his Peerage.

Clergy allowed but once.

Remarks on the Earl of Pembroke's Trial.

Here we ſee different Evidence given by different Witneſſes: Some of the Coroner's Inqueſt declare, that the Body had ſeveral Bruiſes upon it; on the other Hand, a Phyſician and a Surgeon aver, there were none: One Surgeon declares that his Death was occaſioned by ſome Violence; another Surgeon and a Phyſician depoſe, he died a natural Death: But a Majority of the Lords, it ſeems, were of Opinion, that the Deceaſed died of the Kicks and Bruiſes he received from Lord *Pembroke*; otherwiſe they could not have found this Noble Lord guilty of Manſlaughter. Had he been tried by a Jury of Commoners, he might poſſibly have been found guilty of Murder; for I do not find the Deceaſed gave him any Provocation; unleſs his demanding, Why his Friend was turned out of the Room, be deemed ſuch a Provocation, as will juſtify one Man's knocking another on the Head: But this may ſerve to ſhew us what Advantage a Noble Peer has, when he contends with a Plebeian; the former is ſure to meet with moſt indulgent Judges, who will infallibly look upon his Cauſe as their own, and aſſert their Privileges over the lower Claſs of Men.

The

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The Trial of WILLIAM STALEY, Goldſmith, for *High-Treaſon*, at the *King*'s-*Bench* Bar, the 21ſt of *November*, 1678. 30 *Car.* II.

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Staley's *Trial.*

The Charge.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing the Death of the King: And the Overt-Act laid to prove it, was certain treaſonable Words, ſaid to be ſpoken by him, the 14th Inſtant, in *French*, importing, *That the King was a great Heretick, and the greateſt Rogue in the World:* Adding, *Here is the Heart, and here is the Hand that would kill him: The King and Parliament think all is over; but the Rogues are miſtaken.*

The Evidence.

The Priſoner making no Challenges to the Panel, a Jury was ſworn, and the Witneſſes produced: And firſt, Captain *William Carſtairs* depoſed, That the Priſoner, and one *Fromante*, a *Frenchman*, being at the *Black-Lyon* Ale-houſe in *King-ſtreet*, the 14th of that Month, *Fromante* ſaid in *French*, *That the King of* England *was a Tormentor of the People of God*; and the Priſoner anſwered again in *French*, *He is a great Heretick, and the greateſt Rogue in the World*; and ſtriking his Hand on his Breaſt, and ſtamping five or ſix Times, added, *Here is the Heart, and here is the Hand that would kill him: The King and Parliament think all is over; but the Rogues are miſtaken.* That the Deponent was in a Room oppoſite to the Priſoner, and both Doors being open, he ſaw him, and heard him ſpeak theſe Words, and the next Day he cauſed the Priſoner to be apprehended,

Alexander Southerland depoſed, That he was with Captain *Carſtairs*, at the *Black-Lyon*, and heard the Priſoner ſpeak thoſe Words, and that he immediately wrote them down in *French*, as they were ſpoken.

Philip Garret depoſed, That he was with his Captain *William Carſtairs*, at the *Black-Lyon*; but not underſtanding *French*, his Captain told him the Priſoner ſaid he would kill the King; and bid the Deponent enquire the Priſoner's Name, and where he lived, which he did.

The Priſoner's Defence.

The Priſoner, in his Defence, acknowledged he was at the *Black-Lyon* Alehouſe, but denied he ſpoke the Words; and obſerved, that the *French* might be tranſlated *I will kill myſelf*, rather than *I will kill him myſelf:* That their Diſcourſe was very innocent; they were ſpeaking of the Happineſs of this Government compared with that of *France:* That he abhorred the Words he was charged with, having always behaved himſelf as a loyal Subject; and he muſt be a Madman to ſpeak ſuch Words in a Publick Houſe, with the Doors open, as the Witneſſes depoſed.

A Witneſs for the Priſoner.

Then he called a Witneſs to his Character, who depoſed, He had often heard the Priſoner ſpeak very dutifully and loyally of the King; and that he deteſted the Principles of the Jeſuits, though he was a Papiſt.

The partial Directions of the Ch of Juſtice.

The Chief Juſtice, however, in his Directions to the Jury, told them, The Words were fully proved, that they would bear no other Conſtruction than had been put upon them, That the Government was daily expoſed by the dangerous Plots of the Papiſts, and deſired that they would begin with this Man, and make him an Example to deter others from the like Practices: Accordingly the Jury found the Priſoner guilty without going from the Bar; and he was condemned to die as a Traitor, and executed at *Tyburn.*

The Priſoner convicted, and executed.

Remarks on Staley's Trial.

This poor Man had the Misfortune to be accuſed of theſe treaſonable Words at the Time the Nation was firſt alarmed by the Popiſh Plot; and every Thing was believed that tended to blacken the Papiſts: But even Biſhop *Burnet*, one of the Whig Chiefs, was of Opinion he was innocent: He tells us, that the Proſecution of *Staley* the Goldſmith, for the Popiſh Plot, was very hard; for that *Carſtairs*, the principal Evidence againſt him, was a profligate Villain, and did it only to get a little Money out of *Staley*, as he (Doctor *Burnet*) then aſſured the Earl of *Shafteſbury*; but that Earl would hear nothing againſt the Witneſs, and ſaid, *They muſt ſupport the Evidence: And all thoſe who undermine the credit of the Witneſſes, were to be looked upon as publick Enemies.*

Biſhop *Burnet* adds, That Doctor *Lloyd*, who viſited *Staley* a little before his Execution told him, That the Priſoner proteſted he knew of no Plot, nor ever ſpoke the Words charged upon him, or any thing to that Purpoſe; but he was a *Roman Catholick*, and entruſted with the Caſh of a great many Noblemen and Gentlemen of that Perſuaſion, and therefore thought a very fit Man, by the People who hatched this pretended Plot, to open the Bloody Scene with: Theſe were Circumſtances they concluded would not fail to induce the credulous Jury to find him guilty, and their Expectations were unhappily anſwered.

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The Trial of EDWARD COLEMAN, Eſq; for *High-Treaſon* in the Court of *King*'s-*Bench*, the 27th of *November*, 1678. *Mich.* 30 *Car.* II.

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Coleman's *Trial.*

THE Priſoner making no Challenges to the Pannel, the Jury was ſworn.

The Charge againſt him.

The Indictment charged him with High-Treaſon, in compaſſing the Death of the King: And the Overt-Acts laid to prove it were, two Letters he ſent to Father *Le Chaiſe*, the *French* King's Confeſſor, in which he deſired *Le Chaiſe* to procure the Aſſiſtance of the *French* King againſt his Sovereign in order

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order to alter the Eſtabliſhed Religion, introduce the *Romiſh* Superſtition, and ſubvert the Government; and his receiving a Letter from *Le Chaiſe*, in Anſwer to one of the ſaid Letters, wherein Aid and Aſſiſtance was promiſed from the *French* King: The revealing his ſaid Treaſons to Monſieur *Rouvigni*, the *French* Envoy, and moving him to be an Accomplice with him in the ſaid Treaſons; and his ſending three Letters to Sir *Nicholas Throckmorton*, then reſiding in *France*, to ſolicit *Le Chaiſe* to procure Aid of the *French* King for the Purpoſes aforeſaid, were laid alſo as Overt-Acts of the Treaſon of his Heart.

He complains of ſome Hardſhips.

The King's Counſel diſplaying their Oratory, and highly aggravating the Charge againſt the Priſoner while they opened the Indictment, Mr. *Coleman* ſaid, It was hard he might not be allowed Counſel, when Crimes were charged againſt him with ſuch Skill and Advantage: The Premiſſes indeed were ſtrong and artificial; but he muſt deny the Concluſion, for he could ſafely and honeſtly ſay, he was not a Traitor.

The Evidence.

Another thing that ſeemed moſt dreadful to him was, The violent Prejudices, at that Time, againſt every Man in *England* who was a Roman Catholick: If one of that Perſuaſion, though never ſo innocent, ſhould appear at that Bar, Prejudice would ſo biaſs human Nature, he ſaid, that unleſs the Court leaned extremely on the other Side, Juſtice would hardly ſtand upright. Then the Witneſſes appeared: And firſt *Oates*, the Jeſuit, depoſed, That he carried Letters over to *France* to the Fathers at St. *Omers*, and to *Le Chaiſe*, the *French* King's Confeſſor, which he believed were written by Mr. *Coleman*, but they were ſubſcribed by no Body; and that in one of them, the Writer thanked *Le Chaiſe* for ſending the *Engliſh* Catholicks ten thouſand Pounds, which he aſſured him ſhould be employed in cutting off the King of *England*, and rooting out the Proteſtant Religion, as it was intended.

Then *Oates* gave an Account of a Conſultation, held by the Jeſuits, at the *White-Horſe* in the *Strand*, in *Auguſt* laſt, wherein it was reſolved to cut off the King by Aſſaſſins, or by his Phyſicians adminiſtring Poiſon to him: That four Ruffians were ſent to *Windſor* to murder his Majeſty, and the Sum of fourſcore Pound, ſent thither to encourage them; and that *Coleman* gave the Meſſenger who carried it a Guinea to make haſte; that *Grove* and *Pickering* were employed to ſhoot the King, and *Coleman* privy to it; and that Sir *George Wakeman* being offered ten thouſand Pounds to poiſon the King, *Coleman* adviſed the giving him fifteen thouſand Pounds: And laſtly, that Mr. *Coleman* had a Commiſſion from the Pope to be Secretary of State on the expected Change of Government.

Bedloe was the next Witneſs, a Perſon who had been employed by ſome *Engliſh* Catholicks, as a Letter-Carrier to foreign Courts: He depoſed, That he brought a Commiſſion from *Rome* for Mr. *Coleman* to be Secretary of State; (for, according to the Witneſſes of this pretended Plot, the Pope was to have the Sovereign Dominion of *England*, and whoever had the Name of King, he was to act as Viceroy to his Holineſs.) He depoſed alſo, that he carried over a large Packet of Letters from *Coleman* to Father *Le Chaiſe*, and brought Anſwers from that Father, and the *Engliſh* Monks at *Paris*, about a Plot for deſtroying the King, and ſubverting the Government and the Proteſtant Religion: That when he delivered the Letters to Mr. *Coleman*, at his Houſe near *Weſtminſter-Abbey*, *Harcourt* the Jeſuit was with him; and the Deponent heard Mr. *Coleman* ſay, if he had a hundred Lives, and a Sea of Blood, he would ſpend all to Eſtabliſh the Church of *Rome* in *England*; and if there were an Hundred Heretical Kings, he would ſee them all deſtroyed.

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Coleman's Letters.

But the principal Evidence produced againſt the Priſoner, were the Copies of ſome Letters found in his Houſe, which he acknowledged he wrote to Father *Le Chaiſe*, and the Anſwer of Father *Le Chaiſe* to the firſt of them.

In the firſt Letter, *Coleman*, informs *Le Chaiſe* of the Correſpondence he held with *Ferryer*, the *French* King's former Confeſſor, by Means of Sir *William Throckmorton*, who belonged to an *Engliſh* Troop in the *French* King's Service; and moves *Le Chaiſe*, as he had formerly done his Predeceſſor, to prevail on the *French* King to afford them Money and Aſſiſtance, to bring about the Change of Religion in *England*.

In anſwer to which, *Le Chaiſe* tells him, he read his Letter with great Satisfaction, and ſhould be very glad, on his Part, to aſſiſt in ſeconding his good Intentions.

A ſecond Letter was produced, which Mr. *Coleman* had prepared in the Name of the Duke of *York*, his Maſter, and was intended for Monſ. *Le Chaiſe*; but he confeſſed before a Committee of Lords, he prepared it without the Duke's Privity; and that, when he ſhewed it the Duke, he was angry, and rejected it. In this he acknowledges the *French* King's Kindneſs in offering his Purſe and Aſſiſtance againſt the Deſigns of the Duke's Enemies; and tells that Monarch, He has the ſame Opinion of the Parliament, and of the Lord *Arlington*, he had, *(viz.)* That they were not in the Intereſt of the King his Brother, of his moſt Chriſtian Majeſty, or of himſelf; and that it was neceſſary they ſhould make uſe of their joint Credit to prevent their ill Deſigns: That the Lord *Arlington*, and ſeveral more, endeavoured, by a thouſand Deceits, to break the good Intelligence that was between the King his Brother, his moſt Chriſtian Majeſty, and himſelf, and to abuſe them all three; of which he thought fit to advertiſe him, and deſire his Friendſhip and Aſſiſtance to prevent their ill Deſigns.

In the third Letter which *Coleman* actually ſent to *Le Chaiſe* he ſays, We have here a mighty Work upon our Hands; no leſs than the Converſion of three Kingdoms, and by that, perhaps, the utter ſubduing of a peſtilent Hereſy which hath domineered over a great Part of this Northern World a long Time; there never was ſuch hopes of Succeſs ſince the Death of our Queen *Mary*, as in our Days, when God has given us a Prince who

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(is become may I ſay a Miracle) zealous of being the Author and Inſtrument of ſo glorious a Work: And that which we rely on next to Providence, and the Favour of my Maſter the Duke, is the mighty Mind of his moſt Chriſtian Majeſty whoſe generous Soul inclines him to great Undertakings: That they were a little unhappy in having Monſieur *Rouvigny* his Majeſty's Miniſter at the *Engliſh* Court (becauſe he was a Proteſtant): Had he been a Miniſter who would have taken their Caſe to Heart, and repreſented it juſtly to his moſt Chriſtian Majeſty, he did not doubt but he would have aſſiſted them with ſuch a Supply of Money, as would have put their mutual Intereſts out of danger; but, wanting thoſe Advantages, he was afraid they ſhould loſe Ground the next Seſſion, rather than gain any.

Mr Coleman's *Defence.*

Mr. *Coleman*, in his Defence, ſaid, That notwithſtanding the two firſt Witneſſes pretended ſuch an Acquaintance and Familiarity with him, he did not know either of them; and that *Oates*, when he was before the Council, told the King, he never ſaw him (Mr. *Coleman*) before, nor could ſay any thing poſitively againſt him: *To which* Oates *gave no better Anſwer, than that he could not ſee well by Candle-light; and when Mr.* Coleman *appealed to* Bedloe *himſelf, whether he had ever ſeen him in his Life,* Bedloe *anſwered, He ſaw him in the Gallery at* Somerſet-Houſe, *when he came from a Conſult there.*

As to the Letters, wherein he deſired the *French* King's Aſſiſtance to bring about an Alteration of Religion. He ſaid, it evidently appeared he deſired no other Aſſiſtance than that of Money, whereby they propoſed to obtain Liberty of Conſcience, and ſome better Terms for thoſe of their Perſuaſion; and that it was natural for all Men to endeavour to promote the Religion they were of, which he hoped was not Treaſon, if they did not endeavour to introduce it by Force.

That there was nothing in the Letters that intimated any Deſign againſt the King's Life or Government, with which he was charged: On the contrary, it appeared, that his Aim was to make both his Majeſty and the Duke as great as poſſible; and that he propoſed a ſtrict Alliance with *France* for that very End: it could not therefore be ſaid, that his Correſpondence with *Le Chaiſe* tended to the Death or Deſtruction of the King. Beſides, It was now four Years ſince theſe Letters were written, and could not be brought as Evidence of a Plot that was pretended to be upon the Anvil at this Juncture.

The Court direct the Jury.

Mr. *Coleman* having ended his Defence, the Lord Chief Juſtice ſummed up the Evidence, and told the Jury, That it was plain from Mr. *Coleman*'s Letters, he intended to bring in the *Roman* Catholick, and to ſubvert the Proteſtant Religion; and by Conſequence they intended to kill the King, as the likelieſt Means to effect their Deſign: That his Letters plainly convicted him of endeavouring to bring in Popery by a foreign Power: And though he pretended they deſigned to introduce their Religion by procuring Liberty of Conſcience, he knew this was very unlikely to produce that Effect; for, though ſome had ſo little Wit as to turn Fanaticks, very few, when they were left to themſelves, would turn Papiſts: That Mr. *Coleman*, indeed, was bred a Proteſtant, his Father a Clergyman of *Suffolk*; and for him to turn Papiſt, being a Man of Parts, he looked upon this Circumſtance to be an Argument againſt him: He believed he muſt be moved by ſome By-Ends and Secular Motives; his Penſion was his Conſcience, and his Secretary's Place probably the Bait; and inveighed bitterly againſt the bloody Principles of thoſe of the Priſoner's Religion; but barely repeated the Evidence that had been given by *Oates* and *Bedloe*, giving little Credit to it probably.

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The Jury being withdrawn, after a very ſhort Receſs, brought the Priſoner in GUILTY; and the next Day he was brought to the Bar to receive Sentence; when the Lord Chief Juſtice made a Speech, and told him, he would not have him go out of the World under a Miſtake, and think himſelf innocent for waiving the Teſtimony of the two Witneſſes: It was apparent from his own Letters, he was guilty of contriving and conſpiring the Deſtruction of the Proteſtant Religion, and to bring in Popery by the Aid and Aſſiſtance of a Foreign Power: That he who ſubverted the Proteſtant Religion here, by Conſequence brought in a Foreign Authority, and did an Act in Derogation of the Crown, and in Diminution of the King's Supremacy, and endeavoured to bring us under a Foreign Dominion (the Pope). And though he might intend to bring in Popery by procuring a Diſſolution of the Parliament, and obtaining Liberty of Conſcience, and ſuch innocent Means, it was greatly to be feared other Methods would have been taken (at leaſt by his Confederates) if thoſe had failed; and he that enters upon an unlawful Act, is guilty of all the Conſequences that attended it, though he did not deſign them. Then he exhorted him to repent, and diſcover the whole Plot, and not be deluded with vain Hopes of having his Sentence reſpited: They might flatter him, to ſtop his Mouth, 'till they had ſtopped his Breath, and he doubted he would find that to be the Event. He bid him again not be deceived with the Expectation of a Pardon; for the Nation was, at that Time, in ſuch Diſorder, and the People ſo alarmed with ſecret Murders, or daily Outrages, that though the King, who was merciful to a Fault, ſhould be inclined that way, he verily believed both Houſes of Parliament would interpoſe between that and him: There was nothing could ſave him; he muſt ſurely die, and that ſuddenly. After which, he was ſentenced to die the Death of a Traitor.

He is convicted.

The Speech of the Chief Juſtice, in pronouncing Sentence.

Godfrey ſaid to be murdered about this Time.

Condemned. His Speech on this occaſion.

Mr. *Coleman* thanked his Lordſhip for his charitable Advice: He acknowledged, Confeſſion was extremely neceſſary to a dying Man; but the Confeſſion he ſuppoſed his Lordſhip meant, was of the Crimes he was condemned for; namely, *A malicious contriving the Deſtruction of the King and Government:* But he renounced all the Mercy God could ſhew him, if he had not already diſcovered all he knew: That he never made, or

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or received, or ever heard of, any Propoſition towards invading the King's Life, his Crown or Dignity; or to make any Invaſion or Diſturbance to introduce any new Government, or to bring in Popery by Violence or Force: That it was poſſible he might be miſtaken in his Opinion, that Popery would come in with Liberty of Conſcience; but that he thought Chriſtians ought to wiſh all People of the Religion they profeſs themſelves, if they were in earneſt: That he ſhould not now diſpute the evil Principles with which his Lordſhip charged thoſe of the Church of *Rome*; but if he thought them guilty of ſuch Things, he ſhould not be of them: And as to his endeavouring to bring in the Religion of the Church of *Rome* by the Aid and Aſſiſtance of the King of *France*, he never intended or meant by that Aid and Aſſiſtance, any Force in the World, but ſuch Aids and Aſſiſtances as might procure them Liberty of Conſcience.

The Priſoner was executed at *Tyburn* the third of *December* following, and died profeſſing his Innocence to the laſt.

Remarks on Coleman's Trial.

As to the Evidence of *Oates* and *Bedloe* againſt Mr. *Coleman*, it appeared highly improbable at that time; but, ſince the Conviction of *Oates* of Perjury, by ſuch Numbers of Witneſſes muſt be looked upon as a notorious Forgery, to ſupport the Credit of the pretended Popiſh Plot.

The ſole Queſtion is therefore, Whether *Coleman*'s Letters contained High-Treaſon in them? There is no doubt but he had attempted to introduce Popery; but then it as evidently appears that he intended to do it by promoting a ſtrict Union between the King of *England*, the Duke of *York*, and the *French* King: There is not any thing that looks like a Deſign of depoſing his Majeſty, or of putting a Force upon him: He hoped by Money, and the Influence of the Courts of *Great Britain* and *France*, to get the Parliament to conſent to a Toleration, or Liberty of Conſcience in that Reign; and in the Reign of his Maſter the Succeſſor, he certainly hoped the *Roman* Catholick Religion would be re-eſtabliſhed: But both in the Lord *Strafford*'s Caſe, and Biſhop *Laud*'s, an *Endeavour* to alter Religion or Government (with which they were charged) by any other Means than by *Force*, was held not to be Treaſon; though here, the Lord Chief Juſtice ſeems to maintain, that a bare *Endeavour* to change the Religion or Government of this Realm, *by any Means whatever*, was Treaſon. It muſt be admitted, that Mr. *Coleman*'s Correſpondence with the Court of *France*, was highly Criminal, if it tended only to corrupt the Members of the Commons by *French* Money: But ſhould all People be deemed guilty of High-Treaſon who endeavour to procure a Repeal, or Alteration of our Laws by an undue Influence on the Members of Parliament, we ſhould involve a great many in the Guilt of Treaſon, that do not think themſelves in Danger of it.

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The Trials of WILLIAM IRELAND, THOMAS PICKERING, JOHN GROVE, THOMAS WHITE, *alias* WHITEBREAD, and JOHN FENWICKE, for *High-Treaſon* at the *Old-Baily*, *London*, the 17th of *December*, 1678. 30 *Car.* II.

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Trials of Ireland, &c.

The Charge

THE Indictment charged the Priſoners with compaſſing and imagining the Death of the King: The Overt-Acts laid to prove which, were their aſſembling on the 24th of *April* then laſt paſt, in the Pariſh of St. *Giles*'s *in the Fields*, in the County of *Middleſex*, and there conſulting and agreeing to put the King to Death, to alter the Eſtabliſhed Religion, and introduce Popery: Their agreeing that *Pickering* and *Grove*, two of the Priſoners, ſhould kill the King; and that *White*, *Pickering*, *Grove*, and the reſt of their Accomplices, ſhould ſay a certain Number of Maſſes for the Soul of *Pickering*, and pay *Grove* a Sum of Money; and plighting their Faith to each other not to divulge the ſaid Treaſons: *Pickering*, and *Grove*'s providing Arms, and lying in wait at ſeveral Times and Places to murder the King; and the Conſpirators employing four other Perſons unknown, to murder the King at *Windſor*.

The Priſoners making no Challenges to the Jurors, the firſt Twelve in the Pannel were ſworn, and charged with them; after which the Evidence was given.

Oates's Evidence.

And firſt, *Titus Oates* depoſed, That in *December* laſt, the Priſoner *Whitebread* was appointed Provincial of the Jeſuits by their General at *Rome*; and that *Whitebread*, being afterwards at *London*, ſummoned ſeveral Jeſuits to appear at a Conſultation there on the 24th of *April* laſt; and that upon this Summons nine Jeſuits went from St. *Omers* to *London*; among whom were, the Rector of *Liege*, Sir *Thomas Preſton*, *Marſh* Rector of *Ghent*, *Williams* Rector of *Wotton*, Sir *John Warner*, and the Deponent (*Oates*); and that accordingly they appeared at the *White-Horſe* in the *Strand*, where the Conſult began on the ſaid 24th of *April*; but they divided themſelves, and had Meetings in ſeveral other Places afterwards, at ſome of which a Reſolution was ſigned, *That* Pickering *and* Grove *ſhould perſevere in their Attempts to kill the King*; *and that* Grove *ſhould have* 1500 l. *and* Pickering 30,000 *Maſſes ſaid, as a Reward for that Service:* And that he ſaw *Whitebread*, *Ireland*, and *Fenwicke*, and about forty more, ſign this Reſolve: That ſoon after the Conſult, the Deponent went over to St. *Omers*, and in *May* was followed thither by *Whitebread*, who ordered him (*Oates*) to return to *England* and kill Dr. *Tongue*, who had tranſlated *The Jeſuits Morals:* That accordingly he came to *London* about the middle of *June*; and ſome Days after, *Aſhby* came

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came thither after him from St. *Omers* and brought Inſtructions from *Whitebread*. Firſt, That 10,000 *l.* ſhould be offered Sir *George Wakeman* to poiſon the King. Secondly, That the Biſhop of *Hereford* and Dr. *Stillingfleet* ſhould be murdered: And Thirdly, That *Pickering* and *Grove* ſhould go on with the Deſign of murdering his Majeſty. That in *Auguſt* following there was a Conſult of the Jeſuits and Benedictins at *Wild-houſe*, where was preſent *Fenwicke* the Priſoner, and one *Harcourt*; and four Ruffians being ſent to *Windſor* to kill the King, they ſent fourſcore Pounds to them the next Day, and *Coleman* gave the Meſſenger a Guinea to make Haſte.

That the ſame Month of *Auguſt*, *Whitebread* ſent further Inſtructions to *Harcourt*, Rector of *London*, to foment a Rebellion among the Malecontents in *Scotland*, and directed him to ſend ſome to preach among the Presbyterians in their Field Conventicles, and inſinuate the Danger they were in from Epiſcopal Tyranny.

That in the Months of *May* and *June*, he ſaw *Pickering* and *Grove* waiting in St. *James*'s *Park*, with their ſcrewed Piſtols, to kill the King; That in *March* before, *Pickering* followed the King, and had a fair Opportunity of killing him; but durſt not fire, becauſe his Flint was looſe; for which he did Penance, having thirty Laſhes given him by way of Diſcipline.

That *Bedingfield* writing *Whitebread* Word that the Deponent *(Oates)* had diſcovered their Plot in *September* laſt, *Whitebread* beat and reviled the Deponent for it at his Chamber, and commanded him to go beyond Sea; and he was afraid of ſomething worſe, for they aſſaulted him in his own Lodgings.

That *Whitebread* had an Authority to grant Military Commiſſions, and actually iſſued ſome hundreds; particularly, that he ſealed one for Sir *John Gage*, of *Suſſex*, which the Deponent delivered himſelf; but that the Commiſſions to the General Officers were ſigned by *Joannes Paulus de Oliva*, General of the Jeſuits: And the Deponent cloſed his Evidence with a Declaration, That he *(Oates)* always gave it as his Judgment, that it was ſafer to poiſon the King, than to piſtol or ſtab him. It being demanded of *Oates*, if he could produce any two Witneſſes that ſaw him at *London* in *April*, when he pretended the firſt Conſult was held? He anſwered, he lay at *Groves*'s Houſe, but did not bring one Witneſs to prove it; and the Maid of the Houſe depoſed he never lay there.

Bedloe's *Evidence.*

Bedloe depoſed, That he was formerly a Lieutenant in *Flanders*; but of late employed by the Society of Jeſuits, and the *Engliſh* Monks at *Paris*, in carrying Letters to and from *England*, *France*, *Spain*, and *Flanders*; and that he was employed by *Harcourt* and *Coleman* to communicate the Letters he brought over to the Popiſh Party in *England*: That in the beginning of *Auguſt* there was a cloſe Conſult at *Harcourt*'s Chamber, where he underſtood by one *Pritchard*, There was a Deſign to kill the King; and that, *Grove* and *Pickering* having failed, four Ruffians were hired to kill the King at *Windſor*.

That the latter End of *Auguſt* he *(Bedloe)* was at *Harcourt*'s Chamber with *Ireland*, *Pickering*, *Grove*, *Harcourt*, *Pritchard*, and *Fogarthy*: And it was reſolved, that ſince the Ruffians had been diſappointed, *Pickering* and *Grove* ſhould go on, and *Conyers* ſhould be joined with them, and they ſhould aſſaſſinate the King in his Morning-Walks at *New-Market*. That *Grove* ſaid, If they could not do it privately, they would openly; and that thoſe that fell, would have the Glory of dying in a good Cauſe; and both *Oates* and *Bedloe* depoſed, That the Duke of *Ormonde* was to have been aſſaſſinated, and an Inſurrection raiſed in *Ireland* at the ſame time. 1678. 30 Car. II.

The Jeſuits, in their Defence, denied the whole Charge; they did acknowledge, indeed, that *Oates* was of their Society, and that being very poor, they often lent him Money; but as for the Conſultation at the *White-Horſe* in *April*, at *London*, they ſaid they could prove by many Witneſſes, if they had been permitted to ſend for them, that *Oates* was at that time at St. *Omers*: And *Ireland* actually produced ſeveral Witneſſes to prove that he was in *Staffordſhire* in *Auguſt*, when *Oates* made Oath he was at a treaſonable Conſult in *London*: But the Priſoners lamented they had not been allowed Pen, Ink, or Paper; or any Opportunity of ſummoning the reſt of their Witneſſes, which the Court did not ſeem to regard; though *Ireland* urged by Way of Merit, that he had an Uncle killed in the King's Service; and that the *Pendrels* and *Giffords*, who were ſo inſtrumental in ſaving the King's Life after the Battle of *Worceſter*, were his near Relations; and *Pickering* ſaid, his Father was killed in the King's Service. *The Priſoner's Defence.*

The Chief Juſtice, in his Directions to the Jury, ſeems to admit, that *Ireland* was not in *London* in *Auguſt*, when *Oates* and *Bedloe* had ſworn he was there at a treaſonable Conſult; but tells the Jury, though the Witneſſes were miſtaken in Point of Time, their Evidence might be true in the main; adding, That he thought it impoſſible for any Man to feign ſuch a Story as the King's Witneſſes had told, or for any one to disbelieve it when it was told: Nor was it difficult, he ſaid, to believe that theſe Prieſts, who had debauched Men's Underſtandings, overturned all Morals, and deſtroyed all Divinity, were engaged in a Deſign to murder the King; whoſe Humility was ſuch, that they trod upon the Necks of Emperors; their Charity ſuch, as to kill Prince's; and their Vow of Poverty ſuch, as to covet Kingdoms: That they had rendered all Converſe with them impracticable, for they knew no Sin but what might be indulged; no Offence too big for a Pardon; and the blackeſt often Accounted meritorious; and if Sacraments could not bind him, no Obligations or Covenants between Man and Man could, with a great deal more to the ſame Purpoſe; concluding, that the Matter was as plain and notorious as could be, That there was an Intention to bring in Popery by a cruel and bloody Way; and he thought Mr. *Oates* rather juſtified by the Teſtimony offered againſt him, than diſcredited: But obſerving that there was but one Witneſs againſt *Whitebread* and *The Chief Juſtice's Directions to the Jury.*

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Whitebread and Fenwick *reserved for another Trial. The other three convicted; and condemned;*

and *Fenwicke*, he discharged the Jury of them, and directed them only to bring in a Verdict in relation to the other three Prisoners, whom they found GUILTY upon a very little Consideration; and afterwards Sentence was passed on them as Traitors by the Recorder *Jeffries*; who was no less severe in his Reflections on them in the Speech he made when he pronounced Judgment, than the Chief Justice had been; and among others, used this Expression, *That the Prisoners Design was so horrid, that nothing but a Conclave of Devils in Hell, or a College of such Jesuits as theirs upon Earth, could have thought of it.*

but reprieved from Time to Time,

But, however the Evidence might be believed by the Court and Jury, the King seems to have suspected the Truth of it; for he suspended the Execution of the three condemned Jesuits, 'till the House of Commons ordered the Recorder to attend them, and demanded why he had not issued his Warrant for their Executions? To which he answered, he had not yet received any Orders concerning them from the King: And they were afterwards reprieved till the 24th of *January*, when *Ireland* and *Grove* suffered; but *Pickering* was reprieved from Time to Time, 'till the ninth of *May* following, when

and executed at last, at the Instance of the Parliament.

he also was executed. The King seemed inclined to have pardoned them, if the Parliament had not insisted on their Execution; and some Courtiers represented, that, as they were condemned by due Course of Law, it might hazard the Peace of the Nation, if the King should pardon them, when the People were so generally persuaded of their Guilt: But, whatever other People might think of them, they died professing their Innocence to the last.

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Remarks on the Trial of Ireland, &c.

The People were so alarmed at this pretended Discovery of a Popish Plot, being made to believe, that a general Massacre was intended, of all such Protestants as refused to be reconciled to *Rome*, that almost any Evidence was sufficient, at that Time of Day, to convict a Papist; and nothing was thought a Hardship on those who were accused of the Plot: The denying them all Opportunities of making their Defence, or of summoning their Witnesses, was now held extremely equitable by our Whig Patriots; and the People were almost worked up into an Opinion, that it was lawful to knock any one on the Head, that was called a Papist: The infamous Characters of the principal Witnesses, *Oates* and *Bedloe*, were not suffered to be touched upon: And though *Oates* himself declared he had turned Jesuit, and taken Oaths and Sacraments without Number, only to betray his Brethren, yet was his Testimony looked upon as unquestionable; nay, the proving one of the Prisoners to be in another Place, when *Oates* and *Bedloe* swore he was in *London*, was very little regarded: And so artfully did Lord *Shaftesbury*, and his Whig-Brethren, manage this pretended Discovery, that even a Majority of the Parliament and the Tories believed it, till they found it loaded with so many improbable Circumstances, that the Forgery became too gross to be swallowed any longer: Even the Chief Justice and the Recorder *Jeffries*, who tried them, seemed at that Time to be fully satisfied, and to applaud the Verdict given against the three Jesuits; though they lived to alter their Minds, and shew their Detestation of the numerous Perjuries that those unhappy Men were condemned upon.

The Impeachment of THOMAS Earl of DANBY, Lord High-Treasurer of *England*, for *High-Treason*, and other *High Crimes* and *Misdemeanors*, the 23d of *December*, 1678. 30 *Car.* II.

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Earl of Danby's Impeachment.

The Tenor of it.

THE Articles, which were carried up by Sir *Henry Capel*, Brother to the Earl of *Essex*, on the said 23d of *December*, charged him with traiterously assuming Regal Power, in treating of Peace and War, and giving Instructions to Ambassadors abroad, without communicating the same to the Secretaries of State, or the Council: That in order to subvert the Constitution, and introduce Arbitrary Power, he procured an Army to be raised; and continued it, contrary to an Act of Parliament for disbanding it: That he negotiated a Peace with the *French* King upon disadvantageous Terms, and endeavoured to procure a Sum of Money of his most Christian Majesty for consenting to it: That he was Popishly affected, endeavoured to stifle the Plot, and discountenanced the Witnesses: That he had waisted the Publick Treasure, and procured Grants to himself of the Revenues of the Crown.

The Commons therefore prayed that the Earl might be put to answer, and brought to Trial, and Judgment thereupon; and that he might be sequestred from Parliament, and forthwith committed to safe Custody.

The Earl's Defence.

Upon reading the Articles in the House of Peers, the Earl made a Speech in his Defence: wherein he observed, That, as to his assuming Regal Power, he had never transacted any thing of Moment, for which he had not his Majesty's special Command: That the Army was no more raised by him, than by every Lord in that House: That he had been so far from concealing the Plot, that it had been owned at the Bar of the House of Commons, the Witnesses had received all manner of Encouragement and Dispatch from him; and that, if he had not seized *Coleman*'s Papers, none of them had appeared; and they had wanted the most material Evidence of the Plot: That, as to his being Popishly affected, some of those who voted the Impeachment, had acknowledged the Falsity of that Allegation: And as to wasting the Publick Treasure, he knew of none in his Time to waste; all the Money that had been given had fallen short; and the King had laid out more than he had received, in building Ships, or paying off the Debts that had been stopped in the *Exchequer* before his Time; insomuch, that his Conduct would appear rather meretorious than

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criminal. And lastly, that his Gains were not what they had been represented: They might rather arraign his Prudence, in not having done for his Family what he justly ought: And if his Obedience to the King was not his Crime, he thought nothing else would affect him which the Articles contained. That if he had been either a Papist, or a Friend to the *French*, he had not been now accused: He had Reason to believe the principal Informer, Mr. *Montague*, had been assisted with *French* Advice in this Accusation: That no Man could vindicate him more than *Montague*, who had shewn how great an Enemy he (the Earl) was to *France*, under his Hand; and how much he might have had to have been otherwise; and what *Montague* might have had for getting him to take it: That *Montague* knew it would appear under his Hand, that the greatest Invitations to his Majesty to take Money of *France*, were made by himself; and that, if his Majesty would have been tempted for Money, he might have sold Towns there for as much as if they had been his own; but that he always scorned to yield the meanest Village, that was not agreed to by the *Spaniard* and *Hollander*; concluding, That ever since he had the Honour to serve his Majesty, he had delivered it as his constant Opinion, That *France* was the worst Interest he could embrace; they were the Nation in the World from whom he ought to apprehend the greatest Danger; and who had both his Person and Government under the last degree of Contempt.

The Earl remains at Liberty, after the Charge exhibited.

Whether the Lords were satisfied of the Earl's Innocence, or were influenced by the Court, they did not think fit to order him into Custody; and the 30th of the same Month the King prorogued the Parliament, and on the 12th of *January* dissolved it, calling another to meet the 6th of *March* following.

The next House of Commons desire he may be committed.

On *Thursday*, *March* the 20th, the new House of Commons resolved, *Nemine contradicente*, to send a Message to the Lords, to remind them of the Impeachment against the Earl of *Danby*, and to desire he might be forthwith committed to safe Custody, and appointed a Committee to draw up further Articles against him; and finding the Earl was not yet taken into Custody, they sent another Message to the Lords the 22d of *March*, of the same Tenor as the former: And on the 25th of *March*, 1679, received a Message from the Lords, that they had sent to apprehend the Earl of *Danby*, both to his House in Town, and at *Wimbleton*; and that the Usher of the Black Rod had returned, that he could not be found. Whereupon the Commons, on the 4th of *April*, 1679, Resolved, That his Majesty be addressed to issue his Proclamation to apprehend the Earl of *Danby*, with the usual Penalties on such as should conceal him; and that the Officers of his Majesty's Palaces might have Orders that he should not be harboured in any of them.

He withdraws.

An Address for apprehending him.

He gets a Pardon;

In the mean time, the Earl having obtained the King's Pardon, the Commons resolved to address the King, and represent the Irregularity and Illegality of it; and the dangerous Consequences of granting Pardons to Persons impeached. They also ordered a Bill of Attainder to be brought in against the Earl, in which, after several Conferences, having prevailed with the Lords to agree with them in it, if he did not appear, the Earl of *Danby* thought fit to surrender himself on the 13th of *April*, and was committed to the *Tower*; and being brought before the Lords the 25th of the same Month, he pleaded his Pardon. Whereupon the Lords acquainted the Commons, that they had appointed *Saturday*, the 10th of *May*, to hear the Earl of *Danby* by his Counsel, to make good his Plea; but the Commons prevented its being argued, by Resolving, That no Commoner presume to maintain the Validity of the Pardon pleaded by the Earl of *Danby*: And that the Pardon pleaded by the Earl to their Impeachment, was illegal and void, and proceeded to demand Judgment of the Lords against him, which occasioned a Conference between the two Houses, on the 26th of *May*, 1679. When the Commons reminded their Lordships, that upon the Impeachment of the Earl, the common Justice of sequestring him from Parliament, and committing him to safe Custody, was denied them, of which their Lordships had been so sensible, that they had since declared, *That upon the Impeachment of a Peer for High-Treason (where Articles were exhibited against him) he ought of Right to be ordered to withdraw, and then be committed:* And if this Justice had been done them, he had not had an Opportunity of obtaining that illegal Pardon which he had pleaded.

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and pleads it.

They said they were surprised when they received a Message from their Lordships, the 7th of *May*, That as well the *Lords Spiritual* as Temporal, had ordered, That the 10th of *May*, instant, should be the Day for hearing the Earl of *Danby* make good his Plea of Pardon; and that their Lordships had addressed his Majesty for naming a Lord High Steward.

That the Commons apprehended the admitting the Lords Spiritual to exercise Jurisdiction in these Cases, was an Alteration of the Judicature of Parliament; and that if a Lord High Steward was necessary on Impeachments, such Impeachments might be defeated, by suspending or denying a Commission to constitute a High Steward.

The Commons insist, the Lords Spiritual ought not to sit in the House in Criminal Cases.

That the Commons having communicated their Vote, *That the Lords Spiritual ought not to have any Vote in any Proceeding against the five Popish Lords in the* Tower, to their Lordships; and declared, that when that Matter should be settled, and the Methods of Proceeding adjusted, the Commons would then be ready to proceed upon the Trial of the Pardon of the Earl of *Danby*; their Lordships, without giving the Commons any satisfactory Answer, sent them a Message on the 22d of *May*, That the Lords *Spiritual*, as well as Temporal, had ordered the 27th of that instant *May* for the Trial of the said five Lords; leaving them to conclude, that the Lords *Spiritual* have a Right to sit and vote, 'till the Court proceeds to the Vote of Guilty, or Not guilty;

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guilty; and consequently that they might be allowed to judge upon the Earl of *Danby*'s Plea of Pardon.

The Commons therefore thought themselves obliged not to proceed to the Trial of the five Lords on the 27th, but to adhere to their said Vote; for which they also offered these further Reasons:

1. Because their Lordships had received the Earl's Plea of Pardon with a Protestation, wherein he had aspersed his Majesty by false Suggestions, as though his Majesty had commanded, or countenanced the Crimes he stood charged with.

The Commons deny a Pardon can be pleaded in Bar to an Impeachment.

2. The setting up a Pardon to be a Bar to an Impeachment, defeated the whole Use and Effect of Impeachments; and therefore the Case of the said Earl (which in Consequence concerned all Impeachments) ought to be determined before that of the five Lords, which was but their particular Case.

3. Until the Commons have Right done them against this Plea of Pardon, they should apprehend that the Justice of the Kingdom would be defeated, by Pardons of the like Nature, in the Case of the five Lords.

4. That an Impeachment was virtually the Voice of the whole Kingdom; and it would be dangerous if the whole Nation should have Occasion ministred to them to be apprehensive of the utmost Danger from the Crown, from whence they of Right expect Protection.

5. That Articles were first exhibited against the said Earl, and the Trial appointed by their Lordships to be before that of the five Lords; but their Lordships, having since inverted that Order, had given them Cause to doubt, if they should proceed first to the Trial of the five Lords, not only that Justice would be obstructed in their Case, but that they should never have Right done them in this Plea of Pardon.

The Lords insist, the Lords Spiritual ought to vote in Matters previous to the Trial.

The Commons Reasons being read in the House of Lords the 27th, and their Lordships continuing in their Resolution, that the Lords Spiritual ought to sit and vote in the House, in Matters previous to the Trial; neither the Earl of *Danby*, or the five Popish Lords, were brought to their Trials at this Time; but most of them remained Prisoners in the *Tower* several Years: Whereupon the Earl of *Danby* brought an *Habeas Corpus* in *Easter* Term, 1681, and another in 1682, in order to be admitted to bail by the Court of *King's-Bench*.

An Habeas Corpus brought by the Earl, to be admitted to bail.

His Arguments.

The Arguments he used to induce this Court to bail him, were, 1. That he had been both accused and committed, without any Oath made against him.

2. That there was no particular Treason mentioned in the Articles; only the Word *traiterously* had been applied to Things that were not Treason, if they had been true; whereas in the Impeachments of the Popish Lords, they were charged with the highest Treasons, and upon Oaths made against them.

3. That when a Day was set by the Lords for his being heard, and He appeared, his Council were threatned, if they durst speak to the Matter of Law.

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4. That he had his Majesty's Pardon, and yet the Pardon and he had been Prisoners together above three Years, of which he thought this was the first Precedent since the Conquest.

5. That he had not only his Majesty's Pardon, but his Majesty's Declaration of his Innocence, in his Speech to both Houses of Parliament; wherein his Majesty also declared, that he would give him his Pardon ten Times over, if that he had already was defective either in Matter or Form.

6. That he had been Prisoner above forty Months, without any Prosecution for the greatest Part of that Time, which was another Reason in Law for bailing of him; for that, instead of a Restraint *ad Custodiam*, he had undergone a Punishment greater than the Crimes, alledged against him, could have deserved, if they had been true: That his Majesty had also given his Directions to Mr. Attorney, to give his Consent to his being bailed; and he said, there was hardly a Precedent of a King's Prisoner, and at the King's Suit, refused to be bailed, when the King's Consent had been obtained for it: And the Precedent would have been no less strange and new against the King, than against himself, if he was not permitted to be bailed under such Circumstances; and that it must be very dangerous to the Subject, and a plain Failure of Justice, if he could be so restrained of his Liberty, that he might not be bailed without the Leave of the House of Lords. He took it for granted there would have been no Dispute in this Matter, but for a Declaration of the House of Lords, made the 19th of *March*, 1678 *(viz.) That the Dissolution of the last Parliament, doth not alter the State of Impeachments brought up by the Commons in that Parliament:* But, had the Lords actually made an Order against bailing him, it would have been illegal, and contrary to *Magna Charta*; as whatever subjected a Man to an indefinite Imprisonment was.

That it had been admitted in the worst of Times, even during the Usurpation, that an Order of Parliament was not of Force after a Dissolution of the Parliament; and he hoped that the Liberty of the Subject was not more precarious now than it was then: That one of the chief Grounds of the late War between the King and Parliament, was, That an Ordinance of Parliament should not be held equal to an Act of Parliament, and yet those were Orders of both Houses: And here, an Order of one House was held equivalent to a Law; and that against our greatest and most sacred Laws of Liberty, which had been so often confirmed.

The Earl justly observed also, that the Distempers of the Times, had given more Weight to that Order, than any Thing else: There had been several Instances, where the Court of *King's-Bench* had allowed the Pardon of a Peer when pleaded there, though they had no Power to proceed to the Trial of him: That Men had been discharged by that Court upon the King's Writ, without any

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any other Reaſon given in the Writ, but becauſe the King held the Parties to be innocent; as in the Caſes of *Melton* Archbiſhop of *York*, and *Graveſend* Biſhop of *London* 7 *Ed.* 3.

That the King had aboliſhed Accuſations of Treaſon, as in the Caſe of *Talbot* and *Ormonde*, in *Hen.* VI. and where one pleaded an inſufficient Pardon, the Court had ſuch a Regard to the King's Intention of pardoning, that the Party was ordered to procure a better Pardon, 26 *Aſſ.* p. 46. and the King's Intention of pardoning him had been ſufficiently declared to the whole Kingdom; adding, that he had now no Proſpect when a Parliament would ſit; and, if they did, it was a Queſtion whether he ſhould meet with Relief there; for that his Petition had been read the firſt Day of the laſt Parliament; but publick Buſineſs intervening, they had not Time to conſider his private Caſe: That this had been his Misfortune in three Parliaments ſucceſſively; which made it but too plain, that he lay under an indefinite Impriſonment, unleſs he could find Relief in that Court, for that there was no other to appeal to.

He concluded, that as the King had ſufficiently declared there was no Danger in letting him have his Liberty, ſo he had ſuch Bail to offer the Court, as would ſufficiently ſatisfy the World, that he ſhould be forth-coming.

The Judges refuſe to bail him.

To this the Lord Chief Juſtice anſwered, They were not inſenſible of the Hardſhips of his Lordſhip's Caſe, or of the King's Deſire that he ſhould be no longer impriſoned; the King had done as much as lay in his Power to relieve him, but the Miſery of it was, the Court could only compaſſionate him, his Lordſhip having been impriſoned by a higher Hand, and where they had no Power to intermeddle; and that all the Judges had delivered their Opinions, that he could not be bailed: Nor was his Lordſhip indefinitely impriſoned: for whenever his Majeſty was pleaſed to call a Parliament, he would have a Remedy: *(This Motion for Bail was made by the Earl in* Eaſter *Term*, 1682, *after he had been in Priſon three Years, and there was no Parliament in Being.)*

Mr. Juſtice *Jones* ſaid, That the Earl had been charged with Treaſon by an Impeachment, and had pleaded a Pardon before the Lords *(The Validity of which had not been allowed or argued)* which Plea he took to be a tacit Confeſſion of Guilt in Law, though the Party were never ſo innocent, inſomuch that a ſecond Plea could not be admitted; and in that Caſe he did not ſee how that Court could haye any Thing to do with his Lordſhip.

Mr. Juſtice *Dolben* ſaid, That he muſt confeſs the Caſe to be very hard; and he was not of the Opinion of his Brother *Jones*, that his Lordſhip would be debarred of another Plea, if the Pardon ſhould be over-ruled; but if he was put to give a preſent Anſwer, he muſt declare his preſent Opinion to be, That his Lordſhip could not be bailed; though he thought it might well deſerve another Conſideration.

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Mr. Juſtice *Raymond* ſaid, that his Lordſhip's Caſe was attended with ſo many weighty Circumſtances, that it ought to be well conſidered, and by more of the Judges, betwixt that and the next Term; and therefore he would deliver no Opinion then.

And it ſeems the Judges were ſo much afraid of being called to an Account by ſome future Parliament, that his Lordſhip lay in Priſon till the 12th of *Feb.* 1683-4, being between five and ſix Years from the Time of his Commitment; and then the Court of *King's-Bench* ventured to bail him, together with the Earl of *Powis* and the reſt of the Popiſh Lords that ſurvived, who had been committed to the *Tower* for the Popiſh Plot, much about the ſame Time.

Remarks on the Earl of Danby's Impeachment.

It is very much to be queſtioned, whether the Earl was guilty of any of the Articles he was charged with; but happening to be Prime Miniſter at this Time, and having incurred the Diſpleaſure both of Papiſts and Whigs, they took this Opportunity of charging him with all the Mal-adminiſtration that had happened for ſome Years: And when the King had granted him a Pardon, not only queſtioned the Validity of it, but arbitrarily commanded his Counſel not to plead for him, which was certainly an uncommon Stretch of Privilege, and can never be deemed juſt or legal.

The Lords indeed might have declared the Pardon valid, and thereupon diſcharged the Earl, on hearing what he had to ſay to it himſelf; but whether it was not thought fit to carry Things to this Extremity, and break abſolutely with the Houſe of Commons, or for what other Reaſon does not appear: The Earl was ſuffered to remain in Priſon ſeveral Years with the King's Pardon in his Pocket, as he obſerves.

The Judges who refuſed to bail him, no doubt, knew what the Law was in theſe Caſes, as well as the Judges that afterwards bailed him; but they had ſeen ſo many Inſtances of the implacable Rage and Malice of the Whig Leaders, who ſat in the Houſe of Commons about that Time, that they knew their Ruin would certainly have been the Conſequence of bailing him then: But when it was found the King was determined not to call a Parliament in Haſte; and that, if he had called one, they would have been Men of a different Stamp; the Judges made no Scruple of giving him his Liberty, as well as the Popiſh Lords that remained in the *Tower*; which we find ſo far approved by the next Parliament that was called, that their Bail was then actually diſcharged; and though the Court of *King's-Bench* have ever ſince refuſed to bail the Members of the reſpective Houſes, that have been committed by either, during the Seſſions; yet upon a Diſſolution, and ſometimes upon a Prorogation, they have been admitted to Bail: And it his held, That the Court of *King's Bench* may admit to Bail, even a Lord impeached of High Treaſon, when the Parliament is not ſitting. *Hawkins* B. 2. p. 111.

The

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The Trial of JAMES MITCHEL, for an *Attempt to commit Murder* at *Edinburgh*, before the Lord Juſtice General, and the reſt of the Lords Commiſſioners of Juſticiary, the 7th of *January*, 1677-8. 29 *Car.* II.

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The Charge. THE Indictment charges the Priſoner, That having conceived a deadly Malice and Hatred againſt the Right Rev. *James*, Archbiſhop of St. *Andrews*, on Account of his being promoted to that Archbiſhoprick and made one of his Majeſty's Privy Council, he did contrive the Murder and Aſſaſſination of his Grace; and in order thereto, having provided himſelf with a Pair of Piſtols, did, on the 9th of *July*, 1668, proceed to execute his Purpoſe, when the Archbiſhop came down Stairs, and was going into his Coach with the Biſhop of *Orkney*: That he did diſcharge one of his Piſtols loaden with Powder and Ball at them, when they were got into the Coach, and thereby dangerouſly wounded the Biſhop of *Orkney* in the joining of the Hand and Arm, ſo that he was mutilate and diſmembred, and never perfectly recovered his Health, but languiſhed thereof untill he died: From which Premiſes it was evident he was guilty of Murder and Aſſaſſination, by way of Forethought, Felony, *&c.* and therefore ought to ſuffer the Pains of Death, inflicted on ſuch Offenders, by the Laws of *Scotland*.

His Counſel's Objections to the Indictment. The Priſoner denied the Charge in the Indictment, or that he ever made any Confeſſion of it; and his Counſel obſerved, That he could not be charged with Murder; for a bare Endeavour, where the Thing was not effected, they ſaid, could not be puniſhed as if it was actually committed, unleſs in Treaſon and Parricide.

And though the Priſoner might be indicted for Aſſaſſination by their Law, yet it was not laid in the Indictment, That he was hired to commit the Fact, without which he was no Aſſaſſin: And as to the Mutilation of the Biſhop of *Orkney*, their Law did not extend to Mutilation, but to diſmembering only and diſmembring was not ſo much as laid in the Indictment: And although it was inſinuated, the Biſhop died of the Wound, it not being laid, that the Wound was of its own Nature mortal, the Indictment in that Point was inſufficient: And beſides, it might be proved that the Biſhop went about and exerciſed his Function afterwards.

That it was not laid, he invaded (or aſſaulted) the Archbiſhop while he was engaged in his Majeſty's Service, which rendered it inſufficient in that Point; and the Act which made it Capital, was paſſed ſince the Fact committed.

That his Confeſſion, if he made any, was not before proper Judges, and was on a Promiſe of Pardon and Indemnity, and therefore ought not to be urged againſt him.

The Objections anſwered by the King's Counſel. To this the Lord Advocate and the King's Counſel anſwered, That they ſtill inſiſted, the invading and attempting the Life of a Privy Counſellor, was Capital; that in this Caſe the Priſoner proceeded to Action, and did all that lay in his Power to accompliſh the Murder: And whereas it was ſaid, it ought to be proved, that the Attempt was made on the Archbiſhop for doing his Majeſty's Service, that was always to be preſumed, where one attempted the Life of a Privy Counſellor. His Intentions were no otherwiſe to be manifeſted but by his Actions; and the Priſoner, being unknown to his Grace, could have no other Quarrel againſt him than for doing his Duty; the Law would interpret it to be ſo, unleſs he good ſhew ſome other private View he had in committing of it: And beſides theſe Preſumptions of Law, the Priſoner had acknowledged himſelf to be of a Sect that abhorred all Biſhops; and one of his Brethren had, in Print, declared it to be lawful to kill one of that Character: Nay, the Priſoner himſelf had declared it lawful to kill a Biſhop; had endeavoured to make Proſelites to his Opinion, and acknowledged the Reaſon he ſhot at the Archbiſhop to be, becauſe he was a Proſecutor, or Proſecutor, of the Rebels at *Pentland-Hills*; and though the laſt Act, which made it Capital to attempt the Life of a Biſhop, was made after the Fact, that was only explanatory of a former Act: And whereas it was ſaid, he was no Aſſaſſin that did not take Money: Indeed an *Attempt* to revenge a private Injury, was not Capital, becauſe Nature might plead ſome Excuſe for our Reſentment; but where a Perſon, after mature Deliberation, ſhould, by lying in wait, attempt to kill a Perſon that never offended him, the Law made it Capital; the Circumſtance of taking Money, was only demonſtrative and not reſtrictive, ſince theſe Criminals are much more dangerous than thoſe who do it for Hire, who chuſe Darkneſs and Privacy to tranſact their Villany, and never attempt it but with a Proſpect of eſcaping; but the Noon-day Sun, and the greateſt Concourſe of People, cannot ſecure a Man againſt theſe Murderers, who act upon Principal, and perſuade themſelves their Crimes will purchaſe them Seats in Paradiſe, or that the Multitude will protect them againſt their lawful Governors. As their Laws puniſhed Capitally an Attempt to rob or raviſh, much more, Attempts to commit ſuch execrable Crimes.

That he had no Promiſe of Life from any one who had Authority to make it; and if he made his Confeſſion ſpontaneouſly, it would not avail.

The Opinion of the Court on the Indictment. The Court having conſidered the Indictment, and the Arguments on both Sides, found that the Article in the Indictment, founded on the fourth Act of the 16th Parl. *Jac.* 6. importing the Priſoner's aſſaulting the Archbiſhop, who was a Privy Counſellor, by firing a Piſtol at him for doing his Majeſty's

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jeſty's Service, was ſufficiently ſupported; it being proved that the Priſoner ſaid, he made that Aſſault upon the Archbiſhop for perſecuting thoſe who were in Rebellion againſt his Majeſty at *Pentland-Hills*.

But as to the Article concerning the aſſaulting Biſhops and Miniſters, they found it only inferred arbitrary Puniſhment: As to the other Article, concerning the mutilating the Biſhop of *Orkney*, it only inferred arbitrary Puniſhment.

And as to the Promiſe of Life made before the Privy Council, they thought it ſufficient to ſecure the Priſoner's Life, *provided it was proved*.

The Court having thus ſettled Matters of Law (as is uſual in *Scotland*, previous to the Trial) a Jury, conſiſting of fifteen Perſons, was ſworn, and the Evidence produced. And firſt, The Priſoner's Confeſſion before the Lord Chancellor, Lord Regiſter, Lord Advocate, and the Lord Treaſurer, was read, wherein he freely confeſſed, he was the Perſon who ſhot the Piſtol at the Archbiſhop of St. *Andrew*'s, when the Biſhop of *Orkney* was hurt, in the Year 1668. and that no living Creature perſuaded him to do it, or knew of it.

The Priſoners Confeſſion produced as Evidence.

Then ſeveral other Perſons depoſed, That, ſince his being in Priſon, he had confeſſed his firing the Piſtol at the Archbiſhop; and the Reaſon he gave for it was, that his Grace was an Enemy to the Godly; and they could not be in Security as long as he lived. Some Surgeons alſo depoſed, That the Bones of the Biſhop of *Orkney*'s Hand were fractured by the Ball; but that he was afterwards able to liſt it to his Head.

The Lord Chancellor and Treaſurer depoſed. That they ſaw the Priſoner ſign his Confeſſion; but there was no Aſſurance given him of Life.

However, the Priſoner procured a Writing to be read, which he called, An Act of Council (but the Members denied there was any ſuch Act) importing, that the Priſoner, retiring with one of the Committee of Council, confeſſed the Fact, on Promiſe made him of his Life; and that he afterwards renewed his Confeſſion before the Council: But that, being brought before the Lords of Juſticiary, he refuſed to acknowledge his Confeſſion, though his Majeſty's Advocate told him, he ſhould have the Benefit of the Indemnity promiſed him, if he adhered to his Confeſſion; but otherwiſe he would loſe the Benefit of it; and that thereupon the Lords of the Council declared the ſaid Promiſe void.

Mitchel *convicted.*

This pretended Act being rejected, the Jury were ordered to withdraw, and on the 10th of *January* gave their Verdict, as to the firſt Part of the Libel or Indictment, founded on Act 4. 16 Parl. *Jac.* 6. concerning the aſſaulting, or attempting, any of the Lords of Seſſion, Privy Council, *&c.* unanimouſly, That they found it proved.

As to the invading of Biſhops and Miniſters, and wounding the Biſhop of *Orkney*, they likewiſe find it proved with one Voice. As to his Confeſſions, they likewiſe find them proved with one Voice. Laſtly, As to the Priſoner's Exculpation (in relation to the Aſſurances given him of Life) they unanimouſly find it no ways proved.

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Whereupon the Court adjudged, That the Priſoner be taken to the *Graſs-market* in *Edinburgh*, on *Friday* the 18th of *January*, and there be hanged on a Gibbet till he was dead, and his moveable Goods and Gear to be Eſcheat to his Majeſty's Uſe.

Sentence paſſed on him.

The Priſoner was accordingly executed at the *Market-Croſs* in *Edinburgh*, on the 18th of *January*, and being a zealous Field-Conventicler, entertained his Audience with a Diſcourſe that ſuited very well with the Principles of thoſe Men, wherein he told the People, he owned and adhered, with all his Heart and Soul, to the Work of Reformation, as it was begun and carried on in that Kingdom, according to the Word of God, the National Covenant; and the ſolemn League and Covenant, as it was ſettled amongſt them by General Aſſemblies, Synods, Presbyteries, Kirk-Seſſions, and the People's juſt Power to chuſe and call their own lawful Paſtors; declaring that Patronage was a Popiſh Right, and an Uſurpation in the Houſe of God.

His Speech under the Gallows.

That the lawful Magiſtrate (the King) ought to be qualified according to God's Appointment: He muſt not make himſelf ſtrong by Horſes, to the end he may compel the Lord's People to rebel againſt the Lord's expreſs Command; nor, *Jeroboam* like, compel the People to Apoſtacy: *He muſt not multiply Wives to himſelf, much leſs Whores, and marry an Idolatrous Wife like* Jezebel, *(as he inſinuates the King had)*; but he muſt be a diligent Student of the Law of the Lord, and judge the People accordingly; and if he ſhould overturn the Covenant-Work of God, and by a Parliament, packed according to his own Mind, reſcind the Acts of former Parliaments, Committees of States and Councils, he diveſted himſelf of all legal Right over his People; and it neceſſarily followed to be the Duty of ſuch People, *or any Part of them*, to take up Arms in Defence of their Religion, Laws and Liberties, or they would be guilty of bringing God's Wrath upon the whole Land: Adding, I proteſt before God, Angels, and Men, againſt all thoſe Acts of Parliament, or Council, which are againſt the Word of God and Reformation, and carrying on the ſame, according as we are engaged and ſworn in theſe Holy Bands of the National Covenant, and of the Solemn League and Covenant. I hope the Time is drawing nigh, when the Man ſhall be accurſed who keepeth back his Sword from Blood, and who doth the Work of the Lord deceitfully: *Yea, happy ſhall he be, that taketh this Curſed, Malignant, and Prelatical Brood, and daſheth them againſt the Stones:* For this Honour have all his Saints, the high Praiſes of God in their Mouth, and a two-edged Sword in their Hand, to execute Juſtice upon the Heathen.

Remarks on Mitchel's Trial.

It is obſervable from this Trial, That, by the Laws of *Scotland*, the Priſoner is allowed Counſel in Capital Caſes, and a Copy of his Indictment, which he is not in *England*; and that, before the Jury is ſworn, his Counſel are allowed to make their Objections to the Indictment;

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dictment; and if it be found defective, either in Form or Subſtance, by the Judges, the Priſoner is diſcharged: The Jury only try the Facts, and cannot convict or acquit the Priſoner by a general Verdict, as with us: They conſiſt of fifteen, ſeventeen, or ſome odd Number; nor can the Priſoner challenge any of them; and a Majority determines the Fact; but with us, All the Jury muſt agree in their Verdict in Capital Caſes.

We find alſo, That, by the Laws of *Scotland*, an *Attempt* to rob or Murder, is Capital, though it be not effected; which ſeems highly reaſonable, eſpecially where the Criminal fires a Piſtol, or offers to kill an innocent Man, with a Sword, or other Weapon; though, by the Laws of *England*, this is looked upon as no more than an Aſſault, and fineable.

As to this particular Caſe, it appears, That the Priſoner and his Brethren held it lawful, and even meritorious, to kill a Biſhop; that he once actually ſhot at the Archbiſhop of St. *Andrews*, and wounded the Biſhop of *Orkney* in Purſuance of this Principle; and having fled for it, and lived in Exile eight or ten Years, returned to *Edinburgh* again, when he thought the Matter was forgot, and took Lodgings again near the Archbiſhop's, where he was apprehended, with the ſame Piſtols loaded, with which he had attempted to aſſaſſinate his Grace before; from whence it was conjectured, he deſigned to attempt to murder him again; hower, this was prevented by the Villain's being taken up. He ſeems to inſiſt, That his Life was promiſed him by ſome of the Privy Council, if he would make a full Confeſſion, and that he did make ſuch a Confeſſion; but then we find, he afterwards retracted that Confeſſion, by which the Court told him he had forfeited the Benefit of that Promiſe, if any ſuch was ever made him; and he was executed in Purſuance of his Sentence; and ſurely with a great deal of Juſtice; for if ſuch Men, who think themſelves at Liberty to murder Magiſtrates, and even their Sovereign, when ever they do not approve his Adminiſtration, are ſuffered to eſcape with Impunity, it is impoſſible any Government can ſubſiſt: But for a Proteſtant Preacher, *A Miniſter of the Goſpel* (as he called himſelf) to turn Aſſaſſin as well as Rebel, upon a pretended religious Principle, for which his Sect exclaim ſo loudly againſt Papiſts and Jeſuits. All the World muſt acknowledge the Juſtice, and even the Neceſſity, of making ſuch a Man an Example.

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The Trial of ROBERT GREEN, HENRY BERRY, and LAURENCE HILL, for *Murder*, at the *King*'s-*Bench Bar*, the 10th of *February*, 1678-9. 31 *Car.* II.

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The Trial of Green, &c.

The Charge

THE Indictment charged, that the ſaid three Priſoners (together with *Gerald* and *Kelly*, two Prieſts, and one *Philiber Vernet*, who were fled) on *Saturday* the 12th of *October*, then laſt paſt, did make an Aſſault on Sir *Edmund-bury Godfrey*, and that the ſaid *Green* having twiſted his Handkerchief, put it round *Godfrey*'s Neck, and with the Aſſiſtance of his ſaid Accomplices, ſtrangled him; and ſo they were all found guilty of murdering the ſaid Sir *Edmund-bury Godfrey*.

The Evidence of Titus Oates.

A Jury being ſworn, and charged with the Priſoners, the Witneſſes were called. And firſt *Titus Oates*, who depoſed, That on the 6th of *September*, then laſt paſt, he gave in ſeveral Depoſitions upon Oath, containing a Narrative of the Popiſh Plot before the ſaid Sir *Edmund-bury Godfrey*, then a Juſtice of Peace for *Weſtminſter*, and having taken two or three Copies of the ſaid Depoſitions, he went before Juſtice *Godfrey*, again, on the 28th of *September*, and ſwore all the Copies he had made; and then attended the Council with his Narrative: That Juſtice *Godfrey* afterwards told the Deponent, that ſome Great Men thought he had been too zealous in this Buſineſs, while others ſaid he was too remiſs: That he was threatned on both Sides, and went in fear of his Life from the Popiſh Party, That he obſerved he had been dogged ſeveral Days, but ſaid, *He ſhould not fear them, if they came fairly.*

Of Robinſon.

Mr. Prothonotary *Robinſon* depoſed, That being alſo in Commiſſion of the Peace, and meeting Juſtice *Godfrey* at the Quarter-Seſſions for *Weſtminſter*, the 7th of *October* laſt, and dining with him the ſame Day at the High Bailiff's, the Deponent told him, he heard he had taken ſeveral Examinations about the Plot; and *Godfrey* anſwered, He would fain have had others have done it; he thought he ſhould have little Thanks for his Pains. Adding, *Upon my Conſcience I ſhall be the firſt Martyr; but he ſaid, he did not fear them, if they came fairly; he ſhould not part with his Life tamely:* That the Deponent replied, he would do well to have his Man go with him; but *Godfrey* ſaid, he did not like it; It was a Clog to a Man.

Prance's Evidence.

Miles Prance, a ſilverſmith, who worked for the Popiſh Chapel at *Somerſet-Houſe*, depoſed, That two Prieſts engaged him to be concerned in the Murder of Juſtice *Godfrey*, telling him it was no Sin, for he was a buſy Man, and would do a great deal of Miſchief: That they ſent to Juſtice *Godfrey's* Houſe to enquire when he went out, and dogged him ſeveral Days, and particularly on the *Saturday* Morning he was miſſing, they watched him into St. *Clement*'s Pariſh; and about Eight or Nine in the Evening, *Hill* gave the Deponent and his Accomplices Notice to be ready, for Juſtice *Godfrey* was then coming by the Water-gate of *Somerſet-Houſe*; and *Hill* immediately went to the Juſtice, and told him there were two Men quarrelling, and deſired him to come down into the Yard and part them, which, with much Perſuaſion, he conſented

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ſented to; and being come down as far as the Bottom of the Rails, *Green* twiſted his Handkerchief and put it about *Godfrey*'s Neck, and threw him behind the Rails, where he ſtrangled him.

That about a Quarter of an Hour after, the Deponent *Prance* obſerving he was not dead, *Green* wrung his Neck quite round, and punched him with his Knee: That the Deponent ſtood at the *Water-gate*, while *Green* ſtrangled the Juſtice, and *Berry* watched the Stairs: And the Deponent ſaw *Hill*, *Green*, *Girald*, and *Kelly*, about the Body when he came from the *Water-gate*; and a little time after *Berry* came, and they all helped to carry the Deceaſed into *Hill*'s Room, in Dr. *Godden*'s Houſe, where the Corps lay till *Monday* Night, and then it was removed into *Somerſet-Houſe*, where *Hill* ſhewed it to the Deponent with a dark Lanthorn (but he could not deſcribe the Room where it was laid).

That on *Tueſday* the Corps was ordered to be carried to *Hill*'s Chamber again; but ſome Body being there, they carried it to Sir *John Arundel*'s Lodgings, over-againſt it, where it lay till *Wedneſday* Night, and then they removed it to the Room where it was firſt laid; and about Twelve on *Wedneſday* Night, they carried it in a Sedan through the great Gate of the Upper Court of *Somerſet-Houſe* to *Soho*, where *Hill* met them with a Horſe, and ſetting the Body upon the Horſe, *Hill* rode behind it: And the Deponent *Prance* meeting *Hill* the next Morning, *Hill* told him they had run the Juſtice through with his own Sword, thrown him into a Ditch, and laid his Gloves and Cane on the Bank by him.

Objections to Prance's Evidence.

The Priſoners objected to *Prance*'s Evidence, That he had declared before the King and Council that all this was falſe; whereupon *Richardſon*, the Keeper of *Newgate*, was called.

Richardſon depoſed, That having received and Order to bring *Prance* before the Council, *Prance* deſired he might firſt ſpeak with the King; and the Deponent carrying him into the King's Cloſet, *Prance* fell down upon his Knees, and ſaid, *He was Innocent, and they were all Innocent*; and afterwards made the ſame Declaration before the Council; and the Lords asking him if any Body had been tampering with him, he ſaid, No: But he, the Deponent, was no ſooner returned with his Priſoner to *Newgate*, but *Prance* ſaid, all he had ſworn was true; and it was only his fear of loſing his Trade, and being murdered by the Papiſts, that induced him to make that Recantation before the King. And *Prance* now depoſed again in Court, that all he had ſworn againſt the Priſoners was true.

Bedloe's Evidence.

Then the celebrated *Bedloe* made Oath, That he was ſeveral Times ſolicited about the latter End of *September* laſt, by *Le Faire*, *Pritchard*, *Kaines*, and other Popiſh Prieſts, to aſſiſt in murdering a Gentleman; and though they did not directly tell him who it was, directed him to inſinuate himſelf into the Acquaintance of Juſtice *Godfrey*, which he did: That the Day the Juſtice was murdered, they told him, there was a material Man to be put out of the Way that Night, who had all the Information which *Tongue* and *Oates* had given in: That they had made ſeveral Attempts on him which had failed; and if he ſhould not be taken out of the Way, and the Papers taken from him, they muſt wait an Age before they could effect their Deſign: That he (the Deponent) promiſed to aſſiſt them; but demanded where the four thouſand Pounds were which had been promiſed as a Reward, and was anſwered, the Lord *Bellaſyſe* had engaged for that Sum, and Mr. *Coleman* had Orders to pay it. However, the Deponent did not go to the Place appointed, as he had promiſed; but meeting the ſame Prieſt who would have employed him in the Murder (on *Monday* Night following, after it was done) in *Somerſet-Houſe Cloyſters*, the Prieſt reproved the Deponent for not coming to aſſiſt them; but ſaid, if he would help to carry off the Body he ſhould have half the Reward: That then the Deponent was led into a Room, where they ſhewed him the Corps by a ſmall Light; that he knew the Body, and ſaw a Crevat about its Neck like that he (the Witneſs) had on: And the Deponent adviſed them to tie Weights to the Head and Feet, and ſink it in the *Thames*; but they replied, they would put it upon himſelf: And that the Prieſt adminiſtred the Sacrament to the Deponent twice a Week afterwards, to engage him to conceal both the Plot and the Murder. However, going down to *Briſtol* ſome little time after, he found himſelf ſo reſtleſs and diſturbed in his Mind, that he could not help making a Diſcovery.

The Surgeons Evidence.

The Surgeons, who viewed Juſtice *Godfrey*'s Body after it was found, depoſed, That he had one Wound that ſtopped at a Rib, and that another went through his Heart; but they did not think thoſe Wounds the occaſion of his Death, becauſe there was no Evacuation of Blood; and his Neck was ſo looſe that they might have ſet his Chin upon either Shoulder.

Other Witneſſes.

Brown the Conſtable, who was called on finding the Body, alſo depoſed, That there was no Blood in the Ditch; nor any followed the Sword when it was taken out; that his Breaſt appeared black, and his Neck ſeemed to be broke; and that he had a great deal of Gold and Silver in his Pockets.

Elizabeth Curtis, Juſtice *Godfrey*'s Maid, depoſed, that the Day before her Maſter was miſſing, *Green* enquired for him about Nine in the Morning, and was with her Maſter a Quarter of an Hour; that *Hill*, the Priſoner, was with her Maſter a conſiderable time on the *Saturday* Morning he was miſſing.

Stringer depoſed, That *Berry* the Priſoner ſaid he had Orders from the Queen to ſuffer no Strangers, or any Perſons of Quality, to come into *Somerſet-Houſe* the 12th, 13th, and 14th Days of *October (This was to give Credit to a Suggeſtion of the Faction, that the Queen was concerned both in the Plot and the Murder)* it being at that time the Corps lay in *Somerſet-Houſe*, according to the Teſtimony of the Witneſſes.

The Priſoners Witneſſes.

The Priſoners called ſeveral Witneſſes in their Defence, to prove that they were in other Places when the Murder was ſuppoſed to be committed; and that the Body was never

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ver repoſited in that Room in *Somerſet-Houſe*, where the King's Witneſſes had ſworn it was.

Mrs. *Mary Tilden* depoſed, That *Hill* had lived in her Uncle Dr. *Godden*'s Family ſeven or eight Years; that he was a truſty Servant, and kept good Hours, always within at Eight o'Clock at Night, being the Time the Family went to Supper; and particularly, that he was not out after Eight that Night Juſtice *Godfrey* was ſaid to be killed; for he waited on them at Table that Evening, and did not ſtir out afterwards: She ſent the Maid to bar up the Door as ſoon as he came in, as ſhe did every Night.

She alſo depoſed, that it was impoſſible the Body could be in the little Room the other Witneſſes mentioned; for their Lodgings were ſo little, that nothing could be brought in but they that were within muſt ſee it; that the Rooms they mentioned was over-againſt their Dining-Room, and ſhe went into it every Day for ſomething or other, and ſaw none of the Body there.

Broadſtreet, another of Dr. *Godden*'s Family, depoſed the ſame thing.

Dr. *Godden*'s Maid alſo depoſed, She was every Day in the little Room mentioned by the Witneſſes, and ſaw nothing of the Body: nor did ſhe miſs *Hill* out of the Houſe that Evening Juſtice *Godfrey* was ſaid to be killed.

Green's Landlord and Landlady depoſed, That he was not out of their Houſe from half an Hour after Seven till after Ten, on the 12th of *October* in the Evening, when Juſtice *Godfrey* was ſuppoſed to be murdered: And the Maid of the Houſe depoſed, that *Green*, was within betimes that Evening.

Berry, the Porter of *Somerſet-Houſe*, produced the Corporal of the Guard who placed the Centinels there on the 16th of *October*, at Night, when it was pretended Juſtice *Godfrey*'s Body was carried out of the great Gate of that Palace in a Chair; together with the Soldiers who ſtood Centinels at the Gate, who all depoſed, that no Chair paſſed through the Gate that Night: And being asked how they remembred it was the ſame Night they anſwered, Becauſe the King came from *Newmarket*; and the Queen went from *Somerſet-Houſe* to *Whitehall* that Evening, being *Wedneſday*, the 16th of *October*.

Berry's Maid alſo depoſed, That her Maſter was at the Gate of *Somerſet-Houſe* that Evening when the Queen went out; that he afterwards went to Bowls, and came home before Day-light ſhut in, and was not abſent an Hour till he went to Bed, which was about 12 o'Clock.

The Chief Juſtice directs the Jury.

The Lord Chief Juſtice, in ſumming up the Evidence, gave That for the King all the Weight it would bear; but ſlighted the Teſtimony given in behalf of the Priſoners; telling the Jury it anſwered itſelf, or was impoſſible to be true: That Juſtice *Godfrey* had been murdered, either becauſe he knew ſomething the Prieſts would not have him tell, or they did it in Defiance of Juſtice, and in Terror to all thoſe who dare execute Juſtice upon them.

They are convicted,

The Jury withdrawing a little while, brought all the three Priſoners in GUILTY;

for which the Chief Juſtice commended them highly, and ſaid, if it was the laſt Word he had to ſpeak, he ſhould have pronounced them guilty; whereupon the People in the Hall gave a Shout as for a notable Victory, and the next Day Judge *Wild* pronounced Sentence of Death on them.

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condemned,

and executed.

In Purſuance whereof, *Lawrence Hill* and *Robert Green* were executed at *Tyburn*, the Twenty-firſt of the ſame Month of *February*: *Henry Berry*, being a Proteſtant, was reprieved ſome Days longer, in Expectation he would have become an Evidence: but the Faction being diſappointed, he alſo was executed at *Tyburn*; and they all died profeſſing their Innocence to the laſt, and that they knew nothing, either of the Plot or the Murder.

Remarks on the Trial of Green, &c.

Never was more Pains taken, or more Artifice uſed to take away the Lives of innocent Men, under Colour of Law, than to get theſe three poor Men condemned.

The Arts uſed to prove Juſtice Godfrey *murdered by the Papiſts.*

William Bromwel and *John Waters*, who found the Body of Juſtice *Godfrey* in the Fields, being brought before a Committee, (of which the celebrated Lord *Shaftesbury* was Preſident) after their Examination, were ſeverally committed, the former to *Newgate*, and the latter to the *Gate-houſe*, and ordered to be fettered and hand-cuffed. *Bromwel* was kept in the Dungeon three Days and Nights, and then ſent for and examined again; but *Shaftesbury* finding he could make nothing of him, either by Threats or Promiſes, he was remanded to *Newgate*, where he lay nine Weeks more, no one being permitted to ſee him; only his Wife made an Intereſt in one of the Lords, and obtained Leave to viſit him twice.

Corral, the Hackney-Coachman, who was charged with carrying the Corps in his Coach to *Primroſe-Hill*, being examined before the ſame Committee, was offered five hundred Pounds if he would make ſuch a Diſcovery as was intimated to him; and upon proteſting he knew nothing of the Matter, *Shaftesbury* threatned him he ſhould be hanged, and ordered him to be thrown into the Dungeon in *Newgate*, where he was almoſt ſtifled with the Cloſeneſs and Naſtineſs of the Place. After ſome time, Lord *Shaftesbury* ſent for him again, and the Fellow ſtill profeſſing he knew nothing of the Matter, his Lordſhip ordered the Keeper to take and ſtarve him to death: And he was carried back to *Newgate*, and kept in Irons, in the Condemned Hole, from *Thurſday* till *Sunday* Noon, without Meat or Drink, when he was brought before the Committee again, and offered a Reward of 500 *l.* and to be ſecured from Danger, if he would become an Evidence of Juſtice *Godfrey*'s Murder; but the brave honeſt Man fell down upon his Knees, and ſaid, *I know nothing of it, and before I will wrong any Man, I will die immediately!* Whereupon the Lord *Shaftesbury* told him, *He ſhould be carried back to* Newgate, *and rot there:* And when he repreſented he had a Wife and Children, the ſame Lord anſwered, *Let his Wife and Children ſtarve:* And the poor Coachman was kept in the Condemned Hole loaded with

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heavy Irons, 6 Weeks and 3 Days, and afterwards ſeven Weeks on the Common-Side upon Boards, till another Perſon made Oath, that Juſtice *Godfrey*'s Body was carried out of Town on Horſeback; and then, upon giving good Bail, *Corral* was diſcharged; but his Legs were ſo galled with his Irons, that he was not able to drive a Coach for two Months after he obtained his Liberty.

Miles Prance the *Silverſmith*, who was made the principal Evidence of Juſtice *Godfrey*'s Murder, uſed to work for the Queen's Chapel in *Somerſet-Houſe*, as has been already obſerved; and having about this Time a Lodger named *Wren*, who was 14 Months in arrear for Rent; this Lodger, upon his Landlord's preſſing him for money, was obſerved to uſe ſome threatning Words; and a Tankard being loſt about the ſame Time, a further Miſunderſtanding happened between the Landlord and his Lodger; but upon the 20th of *December*, *Prance* had his Rent all paid him, and the next Day was taken up by a Warrant from the Council, upon the Information of *Wren* and ſome others, who pretended to ſuſpect *Prance* was privy to Juſtice *Godfrey*'s Murder: And his dealing with Popiſh Prieſts, and working for a Popiſh Chapel, gave ſuch a Colour to the Suggeſtion, that *Wren* put in his Claim for a Share of the 500 l. which the Diſcoverers of *Godfrey*'s Murder were promiſed by Proclamation.

Prance, while he was in Cuſtody, was carried to a little Room in the Lobby of the Houſe of Commons, whither ſeveral People went out of Curioſity to ſee him, and among the reſt *Bedloe* the Evidence, who having enquired privately which was the Priſoner retired; and *Prance*, after ſome Hours Attendance on the Commons, was carried to an Eating-Houſe called *Heaven*, where *Bedloe* was planted on Purpoſe by Sir *William Waller*, and upon *Prance*'s coming into the Room, *Bedloe* cried out, *This is one of the Rogues that I ſaw with a Dark-Lanthorn about the Body of Juſtice* Godfrey; *but he was then in a Peruke:* And *Prance* being afterwards brought before the Lords, *Bedloe* charged him directly with the Murder, and *Wren* his Lodger with being out of his Houſe when the Body was miſſing.

But *Prance* being examined, poſitively denied all, wiſhing Damnation to himſelf if he knew any Thing of the Murder, or if he ever ſaw *Bedloe* to his Knowledge whereupon he was ſent to *Newgate*, thrown into the condemned Hole, and loaden with Irons. The next Day a Perſon came to him, and laying down a Paper on a Form by him retired; and ſoon after, another, having brought him a Candle, left the Room; whereupon *Prance* looking over the Paper, read the following Minutes, *So many Popiſh Lords mentioned by Name --- Fifty thouſand Men to be raiſed --- Commiſſions given out --- Officers appointed ---* Ireland *acquainted with the Deſign* --- and an Abſtract of *Bedloe*'s Evidence as to the Murder; concluding, *he muſt undoubtedly be privy to the Plot; and adviſing him rather to confeſs than be hanged.*

For as it was contrived, that *Bedloe* ſhould ſecond *Oates* in his Evidence of the Plot, ſo they propoſed, *Prance* ſhould ſecond *Bedloe* in his Evidence of the Murder. *Prance* conſidering his Circumſtances, and being almoſt dead with Cold and the Naſtineſs of the Place, and in great Pain from his Irons, deſired to be carried to Lord *Shaftesbury*, where he was under Examination from five to eleven at Night, and threatned with Death, if he did not confeſs the Particulars mentioned in the Paper that was brought him: Whereupon *Prance* pretended to make a Diſcovery in Part, promiſing to be larger, when he had obtained his Pardon. While he was in this Diſpoſition, a Paper was drawn up and brought to the Priſoner to ſign; and being remanded to *Newgate*, a Committee of Lords and another of Commoners, went thither to examine him on the 23d of *December*, and the next Day being brought before the Council, he charged *Girald* and *Kelly*, two *Iriſh* Prieſts, *Robert Green*, Cuſhion-Man to the Queen's Chapel, *Lawrence Hill*, Servant to Doctor *Godden*, Treaſurer of the Chapel, and *Henry Berry* Porter of *Somerſet-Houſe*, with the Murder of Juſtice *Godfrey*.

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The King afterwards appointed the Duke of *Monmouth*, the Earl of *Oſſory*, and Mr. Vice-Chamberlain, to go with *Prance* to *Somerſet-Houſe*, to ſee the Rooms where he pretended *Godfrey* was laid, and *Prance* went to ſome of the Rooms very readily, but was at ſuch a Loſs as to the principal Room, and ſome other Particulars, that when the Duke of *Monmouth* asked the Lord *Oſſory* what he thought of it, he anſwered, It was all a Cheat: However *Prance*, being brought before the Council again, and confronted with the Priſoners, *Green*, *Berry*, and *Hill*, confidently maintained the Charge againſt them, and they as poſitively denied it: After which *Prance* was remanded to *Newgate*, where he lay with his Irons ſometimes on and ſometimes off, according as he was found tractable or not, and was threatned by the Members of both Houſes ſeverely, to make him come up to *Bedloe*'s Evidence. In the mean Time the Man was not ſo abandoned, but he had ſtill ſome Qualms of Conſcience; and deſiring to be brought before the King, he did, in his Majeſty's Preſence, declare, That the Men he had ſworn againſt were all Innocent, and what he had teſtified againſt them was falſe: Upon which the King ſaid, *Is it ſo upon your Salvation?* And he replied, *Upon my Salvation the whole Accuſation is falſe*; and being immediately carried before the Council, he fell upon his Knees, and made the ſame Declaration there, and that he never ſaw *Bedloe* before he was taken up; that he knew nothing of the Plot or the Murder, and could not reſt for the Story he had told; whereupon ſome of the Council threatned him with the Rack. The next Day he was brought before the Council again, and perſiſted he was innocent, declaring, That he had no other Hints to frame the Story by, he had told them, than the aboveſaid Paper of Inſtructions, which was laid by him in the Condemned Hole; and,

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and, unleſs at the Time *Richardſon* mentioned at the Trial of theſe Men, *Prance* ſtood firm and immovable in his Denial againſt all Terrors and Temptations, from the 29th of *December* to the eleventh of *January*; whereupon he was loaden with Irons again, and thrown into a cold naſty Room, where he lay in ſuch Torment, that he was perpetually roaring and groaning till he became delirious, and then he kept crying out, *Not guilty, not guilty! No Murder, no Murder!* and when People were ſcandalized at this Treatment, the Managers gave out that he was mad. The Keepers, Mr. *Echard* aſſures us, were under the Direction of an ambulatory Committee, who ordered them when, and in what Degree, to ſqueeze, to pinch, to eaſe or ſhackle, to comfort or torment their Priſoners; and *Prance*, being unable to hold out as *Corral* had done, and finding his Life in Danger, promiſed to become an Evidence again; whereupon his Irons were knocked off, and he was removed from that cold diſmal Place he was in, to a good Lodging, and had Variety of the beſt Meat and Drink provided him, allowed Pen, Ink, and Paper, and the Aſſiſtance of a Friend, to finiſh his Narrative. See *Echard*'s Hiſtory of *England*, p. 960, to 962.

This ſame *Prance* alſo in the next Reign, made a voluntary Confeſſion in writing, declaring all the material Parts of his Narrative, Depoſitions, and Evidence, at the Trials of theſe Men, to be falſe, and the Effects of his Cowardice, having been threatned with Death, and tortured to make him accuſe them; which is a full Anſwer to that Queſtion of the Continuers of *Rapin*, *How came it to paſs, that none of the Witneſſes againſt* Green, Berry *and* Hill, *retracted their Evidence in the next Reign, when they might have done it with impunity, if it had been falſe?* For here we find *Prance* did retract his Evidence; *Oates*, another of the Witneſſes, was proved perjured by forty Witneſſes on two Trials; and *Bedloe*, the other material Evidence, was dead, whoſe Teſtimony however was proved to be falſe at the Trials of *Oates*.

Beſides, for what End ſhould the Papiſts murder Juſtice *Godfrey?* Biſhop *Burnet* tells us, He behaved himſelf in a friendly Manner to the Roman Catholicks, and was in good Terms with them; and though he had ſeen *Oates*'s Narrative ſworn, which he could not avoid, *Oates* ſwears in this Trial, he made ſeveral Copies of it, which were likewiſe ſworn and communicated to the Government, and to his Friends; ſo that the Juſtice was Maſter of no Secrets, but what many more were acquainted with, before this Accident happened: It is not conceivable therefore for what End they ſhould deſtroy him. Indeed the Nation appears to have been in a great Ferment, at the pretended Diſcovery of a Popiſh Plot, and ſo diſtracted with the Fears of a general Maſſacre, that they would not give themſelves Leave to examine the Improbability of what the King's Witneſſes teſtified; nay, we find that, though the Priſoner's every one of them, brought good ſubſtantial Witneſſes to prove they were in other Places when the Fact was committed, their Teſtimony was not regarded, but they were Browbeaten, played upon, and ſome of them laughed out of Court. The Managers of the pretended Plot, had ſo contrived the Matter, that the Corps of Juſtice *Godfrey* was carried in great Funeral Pomp from *Bridewell* through the principal Streets of the City, to be buried at St. *Martin*'s *in the Fields*, attended by three or fourſcore Reverend Clergymen, and ſeveral hundreds of eminent Citizens; and theſe were all looked upon as ſo many Witneſſes of his being murdered by the Papiſts, though they knew no more of the Matter than other People: And it was unſafe, after this, for any one to queſtion whether the Juſtice was murdered by the Papiſts, even before any Witneſſes appeared to ſupport the improbable Tale.

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This ſhould make Judges and Counſel extreamly cautious how they are biaſſed by popular Clamour, or deceived by the Arts of deſigning Stateſmen, to run down the unhappy Priſoner. The Chief Juſtice who tried them, and ſome of the King's Counſel, lived to ſee they were egregiouſly miſtaken; and that the principal Witneſſes againſt theſe three Men were People of profligate Characters, and evidently perjured; and they could not but reflect with Horror, how much they had laboured to pervert the Evidence, and influence the Jury to find them guilty.

And here we have an Inſtance of an *Engliſh* Inquiſition, erected by our great Whig Patriots, who, in this Land of Liberty, threw theſe poor People into loathſome Dungeons, before they were convicted of any Crime, and tortured them to death almoſt, to compel them to accuſe themſelves and other innocent Men: So little do theſe pretended Defenders of our Liberties regard them, when they have a Turn to ſerve! How much ſoever they may exclaim againſt Tyranny or arbitrary Power when they are out of Place, they themſelves are the crueleſt Tyrants and Oppreſſors when ever they are poſſeſſed of Power, or can work up the People into a Humour, to ſecond their Ambition and Revenge.

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The Trial of SAMUEL ATKINS, Gent. for *Murder*, at the *King's-Bench* Bar, the 8th, 10th, and 11th of *February*, 1678-9. 31 *Car.* II.

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Atkins's *Trial. Charged as Acceſſary to* Godfrey's *Murder.*

THE Indictment charges the ſaid *Samuel Atkins* with commanding, counſelling, and abetting *Robert Green*, *Henry Berry*, *Laurence Hill*, - - - *Girald*, *Dominick Kelly*, and *Philibert Vernatt*, to murder Sir *Edmundbury Godfrey*, on the 12th of *October*, in the 30 *Car.* II. and with harbouring, comforting, and maintaining the ſaid Murderers, after the Fact was committed.

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His Arraignment.

The Priſoner being arraigned the 5th of *February*, pleaded *Not guilty*, and deſired that all the Examinations that had been taken againſt him, might be brought into Court at his Trial: He deſired alſo that he might have a ſpeedy Trial, for he had already lain ſixteen Weeks in Priſon. To which the Lord Chief Juſtice anſwered, He ſhould be tried on *Monday* the 10th of *February*, after *Green* and the reſt of the Principles were tried, if the Court had Time; but he was not tried till the 11th of *February*.

The Priſoner, having been indicted as Principal in the ſaid Murder, was arraigned alſo as ſuch; but diſcharged of that Indictment for want of Evidence.

The Evidence.

The Witneſſes produced againſt the Priſoner at his Trial the 11th of *February*, to prove him Acceſſary to the Murder, were *Charles Atkins*, *Bedloe*, and *Thomas Walton*.

of Charles Atkins.

Charles Atkins depoſed, That *Samuel Atkins*, the Priſoner, told him, Sir *Edmundbury Godfrey* had very much injured his Maſter (Mr. *Pepys*, Secretary of the Admiralty) and asked him (*Charles Atkins* the Witneſs) if he knew a Man that would be ſtout and ſecret; and asked particularly after one *Child*, bidding the Witneſs ſend him to his Maſter: That accordingly the Witneſs met *Child*, and ſent him to Mr. *Pepys*; that he afterwards met *Child* again, who ſaid he had been there; and *Child* propoſed to the Witneſs, *Charles Atkins*, to join with him in murdering a Man.

Bedloe's *Evidence.*

Bedloe depoſed, That *Le Faire* the Jeſuit told him, that ſuch a one was murdered, and they intended to diſpoſe of the Body; and that one *Atkins* was to aſſiſt in carrying it off: That the Deponent was at a Room in *Somerſet-Houſe* afterwards, where the Corps of Sir *E. Godfrey* lay, and ſeeing a young Man (with ſome other Company) there, he asked him, if his Name was *Atkins*; that the young Man anſwered, it was, and he was Mr. *Pepy*'s Clerk; but he could not ſay the Priſoner at the Bar was the Man: There was no other Light but what they received from a Dark-Lanthorn.

Walton's *Evidence.*

Walton, the Schoolmaſter, depoſed, That the Priſoner, *Samuel Atkins*, promiſed to meet him at a Publick Houſe the 12th of *October* (the Day *Godfrey* was murdered) but did not come: And the Priſoner demanding of this Witneſs, if he did not know him to be a Proteſtant? He anſwered, he knew him to be a zealous Proteſtant.

However, the Attorney General called a Boy, to prove he had ſeen the Priſoner at Maſs; but the Boy declared he did not know him.

The Priſoner's Defence.

The Priſoner, being ordered to make his Defence, ſolemnly proteſted his Innocence; and ſaid, the Witneſs *Charles Atkins*, who accuſed him, had been ſubſiſted by him, and kept from periſhing; and that he never had any ſuch Diſcourſe with him as had been ſworn.

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The Lord Chief Juſtice anſwered, Whether he had or had not, was not material; and acknowledged, that the Evidence *Charles Atkins* had given, was nothing to the Purpoſe.

His Witneſſes.

Then the Priſoner called Captain *Vittles*, Commander of one of the King's Yatchs, who depoſed, That the Priſoner was on board his Yatch the 14th of *October*, the Evening he was ſaid to be in the Room at *Somerſet-Houſe* with *Godfrey*'s Corps, and that he ſtaid there till near Midnight; which was alſo confirmed by the Boat's Crew that brought him to *London* that Night.

He is acquitted.

Whereupon the Jury acquitted the Priſoner, without going from the Bar.

Remarks on Atkins's Trial.

This is a remarkable Inſtance of the Prevalence of the Faction at this Time: Here was an honeſt Gentleman charged with the Murder of *Godfrey*, committed to *Newgate*, and laid in Irons for ſixteen Weeks, upon the moſt trifling Suggeſtions; the principal Deſigns of which ſeems to be, to make him accuſe his Maſter, Mr. Secretary *Pepys*: But he was a Perſon of more Honour, and being able to prove himſelf in other Places, both at the Time of *Godfrey*'s Death, and the Time it was pretended his Corps lay at *Somerſet-Houſe*, he was acquitted of courſe, of being either Principal or Acceſſary to *Godfrey*'s Death. His Name-ſake *Charles Atkins*, appears to have been a very forward Witneſs; though he had been relieved by the Priſoner in his Neceſſity, yet, in Hopes of ſharing the great Rewards that were promiſed at this Time to the Diſcoverers of *Godfrey*'s Murder, he had the Baſeneſs and Ingratitude to accuſe his beſt Friend, and endeavour by his deteſted Perjuries, to deprive him of his Life: And the Whigs, who had the Management of the Matter, and whoſe Buſineſs it was to enflame the People, we find, laid hold of the moſt remote and trifling Circumſtances, to confirm the Truth of the pretended Plot; but they ſeemed a little aſhamed at this Trial of accuſing and proſecuting an innocent Man ſo inhumanly, and endeavouring to take away his Life, when they had ſo very little Colour for it.

Mr. *Pepys*, Secretary to the Admiralty, to whom the Priſoner was Clerk, was accuſed alſo as a Conſpirator by the profligate Witneſſes of the pretended Popiſh Plot, and thereupon committed to the *Tower* by the Houſe of Commons; but he was admitted to Bail the next Month, and at length diſcharged without being brought to a Trial: And this was the Caſe of many more, whom the Witneſſes accuſed for no other Reaſon, but in Expectation of raiſing their Fortunes, by ſwearing Men out of their Lives. It muſt remain a laſting Reproach to this Nation, that ſo many were deſtroyed upon the Teſtimony of ſuch Wretches, as no Man ſcarce would have credited in the moſt trifling Concerns.

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The Trial of Lord Conwallis.

The Trial of CHARLES Lord CONWALLIS, for *Murder*, before the Lord High Steward, and a certain Number of Peers commiſſioned to try him, in *Weſtminſter-Hall*, 1678-9. 31 *Car.* II.

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The Indictment.

AN Indictment was found by the Grand Jury of *Middleſex*, ſetting forth, That, *Charles* Lord *Conwallis* (together with *Charles Gerrard* and *Edward Bourne*) on the 18th of *May*, then laſt paſt, did felonioufly, and of his Malice aforethought, make an Aſſault on the Perſon of *Robert Clerk*, in his Majeſty's Palace of *Whitehall*, within the ſaid County; and that the ſaid *Gerrard* took up the ſaid *Clerk* in his Arms, flung him down and broke his Neck, of which the ſaid *Clerk* inſtantly died: And that the ſaid Lord *Conwallis* was preſent, aiding and abetting the ſaid *Charles Gerrard* to commit the ſaid Murder, and ſo was a Principal in it.

The Evidence.

A Soldier, who ſtood Centinel at the Bottom of the Stairs that led from the Gallery in *Whitehall* into the Park, that Night the Fact was committed, depoſed, That on the 18th of *May*, between one and two in the Morning, the Lord *Conwallis* and Mr. *Gerrard*, with three Footmen behind them, came from the ſaid Gallery down the Stairs into the *Park*, and demanding of him the Hour, he told them; but they being diſordered in Drink, with many Oaths replied, he lyed, went by him into the *Park*, and ſwore they would kill ſomebody before they went away: That about an Hour after they returned to the Stairs, and he (the Centinel) demanding, Who comes there? They anſwered him in a very obſcene rude Language, threatning to kill him, but he kept them off: Then one of them gave away his Sword, and ſwore he would kiſs him, which he (the Centinel) refuſing, they threatned him again, and ſeemed to contend which of them ſhould run him through: At length, going up the Stairs, there came two young Lads to the Centinel, and one of them deſired him (the Deponent) to call him early the next Morning, which my Lord *Conwallis* and *Gerrard* hearing as they ſtood on the Top of the Stairs, they bid the Deponent ſhoot the Boy, and they would bear him out; and, on his refuſing, one of them ſwore he would kick the Boy's Arſe to Hell: To which the Boy made ſome Reply, wherein the Word Arſe was repeated: Whereupon one of the Gentlemen in a Rage run down the Stairs; and the Boy who ſpoke the Words getting away, the Gentleman took the other Boy up in his Arms, he crying out all the while, *O my Lord it was not I! indeed my Lord it was not I!* and either by throwing him down on the Ground, or by a Blow, killed the Boy out-right.

The Boy who ſpoke the Words, confirmed the Centinel's Evidence; but depoſed, That he only ſaid, *Why kick my Arſe to Hell?* However the Gentlemen miſtook his Words.

Two of the Lord *Conwallis*'s Footmen, who had been indicted for the ſame Murder and acquitted by the Court of *King's-Bench*, were admitted to give Evidence in this Caſe, and depoſed, That it was Mr. *Gerrard* that committed the Fact; and that my Lord *Conwallis* remained at the Top of the Stairs, and ran away as ſoon as the Fact was done, for Fear of being knocked on the Head by the Soldiers.

The Counſel's Obſervations on the Evidence.

Mr. Sollicitor General obſerved upon the Evidence, That it appeared, both my Lord and Mr. *Gerrard* had a murderous Intention, both of them ſwearing they would kill the Centinel: And as to the Murder that was actually committed, his Lordſhip was preſent at it, and had not given any Evidence that he diſapproved of it, or endeavoured to prevent it; all which amounted to as much in Law, as if he had ſtruck the Blow.

Mr. Serjeant *Maynard* alſo obſerved, That his Lordſhip's being at ſome Diſtance would not excuſe him, if he was engaged with *Gerrard* in an unlawful Deſign; and cited the Lord *Dacres*'s Caſe, who went into a Park with other Company to ſteal Deer; and though my Lord and ſome of them fled on the Keeper's Coming, yet the Keeper being killed afterwards, when his Lordſhip was without the Pales, and a Mile diſtant from the Place, yet he was adjudged guilty of Murder.

Lord Conwallis's *Defence.*

The Lord *Conwallis* ſaid in his Defence, that he was indeed in Company with Mr. *Gerrard* that Night the Fact was committed, but that he had no ill Intention; and obſerved that there was but one Witneſs who depoſed, that both of them ſaid they would kill the Centinel: That he was not conſcious that he had any Hand in this Murder, and therefore had not withdrawn himſelf; but truſting to his Innocence, ſurrendered to the Coroner the next Day, and now ſubmitted to the Judgment of his Peers.

The Priſoner being taken from the Bar, and the Lords withdrawn to conſider of their Evidence, the Lords, about two Hours after, returned to their Seats, and deſired to propoſe a Point of Law to the Judges: To which the Lord Steward anſwered, That the later and better Opinion was, That ſuch Queſtions ought to be put in the Preſence of the Priſoner, that he might know whether the Caſe was juſtly ſtated: Whereupon the Priſoner, was brought to the Bar again, and the following Queſtion propoſed to the Judges, *(viz.)* Whether thoſe who were preſent, and contributed to any Diſorders, whereupon a Manſlaughter enſues, are as guilty of Manſlaughter as he who is actually the Manſlayer; as it is in Murder; where all, who are guilty of the Treſpaſs which occaſions it, are deemed equally guilty with him who commits the Fact?

A point of Law reſolved.

The Judges anſwered, The Caſe was the ſame in Manſlaughter, as in Murder.

The Lords withdrawing again, and returning into the Court after a ſhort Receſs, and

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the Lord High Steward demanding of them, in their Order, beginning with the youngeſt Baron, Whether the Lord *Cornwallis* was Guilty? Six of them declared him guilty of Manſlaughter; but a great Majority acquitted him; whereupon his Lordſhip was diſcharged: And the Lord High Steward breaking his Staff, the Court was diſſolved.

The Priſoner is acquitted.

Remarks.

The Lords, no doubt, gave their Verdict according to their Judgment: They believed, I preſume, that the Deceaſed was killed by Accident; but had this Noble Peer been tried by a Jury of Commoners, poſſibly he had not come off ſo well: For here were two Gentlemen declaring they would kill the Centinel, or ſome Body, and actually attacked the Soldier, who depoſed, that it was with Difficulty he kept them off: Then, without any Provocation, one of them takes up an innocent Boy in his Arms, and throws him down with that Force that he killed him upon the Spot. What Denomination muſt we give this Fact? And whether it was my Lord or *Gerrard* that did it, only appears by the Evidence of his Lordſhip's Footmen, who were indicted as Acceſſaries to the ſame Murder; and their Evidence was ſo well received, that it ſeems to have turned the Scale.

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Upon the whole, as the Caſe ſtands, a Commoner muſt be mad who does not avoid all Occaſions of contending with a Noble Peer, ſince the leaſt ill Language is held a ſufficient Provocation to take away his Life.

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The Trial of DAVID LEWIS, Clerk, for *High-Treaſon*, at *Monmouth* Aſſizes, the 28th and 29th of *March*, 1679. 31 *Car.* II.

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Lewis's *Trial.*

The Indictment.

THE Indictment charges the Priſoner with High-Treaſon, upon the Statute of the 27 *Eliz. cap.* 2. for that he went beyond Sea, received Orders from the Church of *Rome*; then returned back to *England*, and remained here forty Days, and upwards; which is made High Treaſon by that Statute.

The Evidence.

Three or four Witneſſes depoſed, That the Priſoner read Maſs ſeveral times, took Confeſſions, gave Abſolutions, Married and Chriſtened: And another, that ſhe heard him preach both in *Engliſh* and *Welch*; and that there were Altars, Chalices, and Crucifixes in the Place where he officiated.

The Priſoner's Defence.

The Priſoner in his Defence ſaid, he was indicted indeed on the 27th of *Eliz.* for that, being a natural-born Subject, he was ordained beyond Sea, by an Authority derived from the See of *Rome*, and returned back, and remained in *England*; but he conceived none of the Witneſſes proved the Facts laid in the Indictment.

To which Mr. Juſtice *Atkyns* replied, It was not expected they ſhould bring Perſons to prove they ſaw him ordained; it was enough they had given Evidence that he had exerciſed the Function of a Prieſt.

The Priſoner ſaid, they could not prove he read Maſs, unleſs they firſt proved he was ordained by an Authority derived from the See of *Rome*; for, if there was no Ordination, there could be no Prieſt; and if no Prieſt, then no Maſs: And as for Confeſſions and Abſolutions, theſe were performed by the Miniſters of the Church of *England*; and many of the Laity baptized in Caſes of Neceſſity, though they were no Prieſts: And he apprehended that barely the reading Maſs was not Treaſon.

Mr. Juſtice *Atkyns* told the Priſoner, That he who *heard* Maſs, indeed, only forfeited 100 Marks by the 23d of *Eliz.* but he that uſed to read it, was guilty of High-Treaſon.

Then the Priſoner objected, that the Witneſſes ſwore againſt him out of Malice; and particularly, that one of them, not being able to prevail againſt him in a Suit in Chancery, vowed, *She would never leave proſecuting him, till ſhe had waſhed her Hands in his Heart's Blood, and made Pottage of his Head:* And the Priſoner produced four Witneſſes, who atteſted the Truth of it. He alſo produced others, who depoſed, That *Price*, one of the principal Witneſſes againſt him, ſaid that very Morning his Trial came on, that he doubted if the Priſoner was the Man.

He is convicted, and condemned.

The Jury being withdrawn, after a ſhort Receſs, brought in their Verdict, that the Priſoner was GUILTY; and Sentence paſſed on him as a Traitor.

He was reprieved from Time to Time, for the Space of five Months; but at length was executed at *Uske* in *Monmouthſhire*, on the 27th of *Auguſt*, 1679.

His Speech.

At the Place of Execution Mr. *Lewis* made a Speech to the People, wherein he ſaid, he thanked God that he did not ſuffer as a Thief or a Murderer, but as a Chriſtian, and therefore was not aſhamed. How forward he had been to relieve the Poor, his impartial Neighbours could inform them; and yet, during his nine Months Impriſonment, ſeveral foul Aſperſions had been caſt upon him by ſome of thoſe to whom he had been charitably ſerviceable for thirty Years: He prayed God to forgive them, and hoped, notwithſtanding thoſe Calumnies, he ſhould retain the Character of an honeſt Man amongſt Gentlemen of Worth, with whom he had lived and converſed.

He declared, by all that was ſacred in Heaven and Earth, that he knew nothing of any Plot; nor could the Witneſſes of the Plot, *Oates*, *Bedloe*, *Dugdale*, or *Prance*, lay any thing to his Charge, though they ſifted him thoroughly laſt *May*, while he was confined in *Newgate*.

He was never taught the Doctrine of *King-Killing*; and from his Soul he deteſted and abhorred it, as directly oppoſite to the Principles of the Chriſtian Religion, which he profeſſed: That it was the Reſolution of the Council of *Conſtance*, That it was damnable

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ble for any Subject, or private Perſon, to murder or conſpire againſt their lawful Prince though he were a *Turk*, an Apoſtate, a Perſecutor, or a Tyrant. *Clement*, indeed, murdered *Henry* III. and *Ravilliac*, *Henry* IV. of *France*; but they were puniſhed for it with the utmoſt Severity, and ſtigmatized by all *Roman* Catholicks as Miſcreants and Villains; and the whole Body of *Roman* Catholicks ought not to be cenſured for the Villainy of a few Deſperadoes. For his Part, he always loved and honoured the King, and prayed for his Proſperity; and whatever Plot there might have been, he prayed it might be brought to Light, and the Actors brought to condign Puniſhment.

He confeſſed he was a *Roman* Catholick Prieſt, of *the Society of Jeſus*; and bleſſed the Hour in which he was ordained, ſo firmly was he fixed in his Religion. He ſaid, that if Life, and all the good Things of this World, were offered him to renounce it, they could not move him. He was condemned, he obſerved, for reading Maſs, hearing Confeſſions, adminiſtring the Sacraments, anointing the Sick, Chriſtening, Marrying, and Preaching: As for reading Maſs, it was the old accuſtomed and laudable Liturgy of the Holy Church: and all the other Acts were Acts of Religion, tending to the Worſhip of God; and as he died for theſe, he died for Religion. That he was told at his Examination in *London*, *If he would diſcover the Plot, and conform, he might ſave his Life*; but he knew nothing of the Plot, and his Conſcience would not ſuffer him to conform: He muſt die therefore for Conſcience and Religion; and as he died upon ſuch a good Account, he laid down his Life with Alacrity. 1678-9. 31 Car. II.

He forgave all his Enemies, eſpecially the principal Proſecutor, who had long thirſted after his Blood; and wiſhed his Soul ſo well, that, were it in his Power, he would ſeat him a Seraphin in Heaven; praying for them in the Language of St. *Stephen*, *Lord, lay not this Sin to their Charge:* And in the Words of our Saviour, *Father, forgive them, for they know not what they do.*

He ſaid, It was with Reaſon he loved them; for though they prejudiced their own Souls, they had conferred on him the moſt ineſtimable Benefits: He wiſhed them therefore a good Eternity; adding, *O Eternity, Eternity! How momentaneous are the Glories, Riches, and Pleaſures of this World! And how deſirable art thou, endleſs Eternity.*

I ſhall make no other Obſervations on this Trial, but that this Gentleman was condemned and executed, purely for being a Popiſh Prieſt, without any manner of Evidence of his being in any Plot againſt the Government; as was the Caſe of ſome others at this Time. The Faction would not ſuffer a Popiſh Prieſt to live; and ſeemed to threaten the King, unleſs he ſuffered the Laws to be put in Execution againſt them with the utmoſt Rigour; though it is generally agreed, thoſe Laws were only made *in Terrorem*. *Remarks.*

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The Trial of NATHANAEL READING, Eſq; for a *Miſdemeanor*, in endeavouring to ſuborn one of the King's Witneſſes to ſtifle his Evidence, before Commiſſioners of *Oyer* and *Terminer*, in *Weſtminſter-Hall*, the 24th of *April*, 1679. 31 *Car.* II.

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Directions to the Grand Jury.

THE Court directed the Grand Jury to find the Bill againſt Mr. *Reading*, if they had but probable Evidence of the Charge; becauſe their Preſentment, they ſaid, was not a Conviction, but in the Nature of an Accuſation, in order to bring the Priſoner to a fair Trial. They were inſtructed alſo not to find it Treaſon, but Miſdemeanor only; and the Jury having found the Bill, in Purſuance of their Directions, eleven of the twelve Judges aſſembled in the Court of *King's-Bench*, to try him on the 24th of *April*, when the Priſoner was brought to the Bar, and arraigned.

The Indictment.

The Indictment ſet forth, That, whereas *Edward Coleman*, *William Ireland*, *John Grove*, and other Traitors, had conſpired the Death of the King, and the Subverſion of the Eſtabliſhed Religion and Government, for which they had been attainted and executed; and whereas *William* Earl of *Powis*, *William* Lord Viſcount *Stafford*, with three other Noblemen, and Sir *Henry Tichburn*, were accuſed of the ſaid Treaſons, and committed to the *Tower*, and thereof impeached by the Houſe of Commons; the Priſoner, *Nathanael Reading*, well knowing the Premiſſes, and being deviliſhly affected againſt the King, his Supreme and Natural Lord, and deviſing to ſubvert the Government and the Religion eſtabliſhed, and to obſtruct and ſtifle the Diſcovery of the aforeſaid Treaſons, and retard the Proſecution of the ſaid Lords in the *Tower*, *&c.* did ſolicit and ſuborn *William Bedloe* to leſſen and ſtifle his Evidence againſt the ſaid Lords, and to give ſuch Evidence as he, the ſaid *Nathanael Reading*, ſhould direct; and to that Purpoſe did corruptly give to the ſaid *William Bedloe* fifty-ſix Guineas, and promiſed him more, to the Hindrance and Suppreſſion of Juſtice, in Contempt of the Laws, *&c.*

The Priſoner pleading *Not guilty*, and the Jurors being called over, the Lord Chief Juſtice *North* directed that Sir *John Cutler* ſhould be Foreman of the Jury: Whereupon the Priſoner challenged him; but was told by the Court that he could challenge none without Cauſe, being indicted only for a Miſdemeanor. *No peremptory Challenges in a Miſdemeanor.*

The Priſoner replied, The Indictment contained expreſs Treaſon; and complained that he had no Counſel or Friend, or ſo much as his Wife ſuffered to come near him, though he had been very ill, occaſioned by the barbarous and illegal Uſage he had undergone; and *Reading complains of Hardſhips.*

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and believed he was the firſt *Engliſhman*, in ſuch Circumſtances, that was ever ſo uſed. He apprehended, that the Indictment charged him with greater Treaſons than *Coleman* and the reſt had been executed for, and therefore deſired the Judgment of the Court, If he might not be allowed a peremptory Challenge?

The Proſecutor calls the Crime what he pleaſes.

The Lord Chief Juſtice *North* anſwered, If the Fact laid in the Indictment had been laid as an Overt-Act for the evidencing the Imagination of his Heart in compaſſing the King's Death, and the Deſtruction of the Realm, there it had been an Indictment of Treaſon; but ſince there was no Treaſon formally laid, nor the Word *proditorie*, which was neceſſary in all Indictments of Treaſon, it was only a Miſdemeanor he was charged with, which was a great Favour; therefore he muſt ſhew his Cauſe of Challenge.

The Priſoner inſiſts, he was charged with Treaſon.

The Priſoner deſired to know, If, after this Favour ſhewed him, he might not be indicted for High-Treaſon? And obſerved, that there did not want any one Circumſtance of the Formality of an Indictment for High-Treaſon but the Word *proditorie*; for it was ſaid, that *Coleman* and others did conſpire the Death of the King; that the Lords in the *Tower* were accuſed of the ſame Treaſon; and that he, the Priſoner, knowing the Premiſſes, did falſely, maliciouſly, and adviſedly ſuborn the Witneſſes againſt them; *&c.* which muſt amount to Treaſon in him, or Miſpriſion of Treaſon at leaſt.

The Chief Juſtice anſwered, There was a Difference between the Knowledge of a Treaſon that was ſecret, and the concealing it, and the Knowledge of a Treaſon that was diſcovered: That though the concealing of a ſecret Treaſon, and endeavouring to ſtifle the Evidence was Miſpriſion of Treaſon; yet the knowing of a Treaſon that all the World knew was not Miſpriſion of Treaſon; nor was it laid as a Crime here, but only as an Aggravation of the Crime. And as for his Demand, Whether he might not afterwards be tried for Treaſon, they were not to ſatisfy him; but he was to anſwer to the Indictment as it was. An Indictment of Treaſon or Miſpriſion of Treaſon, was not to be laid ſo as that the Crime ſhould be collected out of the Matter of Fact only, but it muſt be formally laid.

The Court anſwer, Treaſon muſt be formally laid.

The Priſoner replies, he was charged with formal Treaſon.

The Priſoner then deſired to know, If being deviliſhly affected to the King, intending to levy War, change the Government, and alter Religion, was not Treaſon?

His Challenges overruled.

The Court anſwered, They ſhould reſolve none of his Queſtions; but ſaid, that no Judgment of Treaſon could be given againſt him upon this Indictment; therefore if he had any particular Cauſe to challenge Sir *John Cutler*, he muſt ſhew it.

The Priſoner replied, There was an uncommon Intimacy between *Bedloe*, his Accuſer, and Sir *John Cutler*; but he was told, unleſs he could ſhew that Sir *John* had given his Opinion that he was guilty, this was no Cauſe of Challenge: And Sir *John Cutler*, and the reſt of the Jury, were ſworn.

Then the King's Counſel opened the Indictment, and were about to prove, that *Coleman*, *&c.* had been attainted and executed; and that the Lords in the *Tower* were impriſoned and impeached as Conſpirators in the Popiſh Plot: But Mr. *Reading* admitted theſe Facts, and ſaid he believed there never was a greater Plot laid in Hell than this; he abhorred the Thoughts of it, and had encouraged the Diſcovery of it.

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Bedloe's Evidence againſt him.

Then the King's Witneſſes were called: And firſt, *Bedloe* depoſed, That Mr. *Reading* had been very juſt to him in his private Concerns; and as to the Plot, had, in all publick Companies, preſſed him to make a full Diſcovery of it; and declared, that thoſe who had been executed for it ſuffered juſtly; and that, indeed Mr. *Reading* never endeavoured to ſtifle the whole Plot, only in private deſired him to be cautious as to ſome particular People he ſolicited for, not but that he believed them guilty as well as the reſt; but deſired he *(Bedloe)* would not be ſo hot againſt them. And after he had made him eaſy, as he termed it (given this Witneſs a Bribe) deſired he would make *Dugdale*, the other Witneſs, eaſy too; telling the Deponent, he might gain his Point with the King and Parliament if ſome ſuffered, he need not run at the whole Herd; and ſaid, he would adviſe him how far he ſhould proceed, and if he could fix any thing for them, he ſhould be ſure to be well gratified: That the Perſons he ſolicited moſt for, were, the Lords *Powis*, *Petre* and *Stafford*, Sir *Henry Titchburn*, Mr. *Roper*, Mr. *Caryll* and one *Corker* a Jeſuit; and he made him eaſy too as to *Whitebread* and *Fenwicke* at their Trial, for he (the Deponent) had enough againſt them then; but he would not break off the Treaty between Mr. *Reading* and him, concerning the Lords in the *Tower* (as he muſt have done, if he had given all his Evidence againſt *Whitebread* and *Fenwicke* then,) becauſe he knew that was of greater Conſequence than two old Prieſts.

Confeſſes he ſuppreſſed Part of his Evidence.

That a Day or two after the Lord *Danby* was ſent for by the Black-rod, Mr. *Reading* told the Deponent he had been with the Lords in the *Tower*, and they did think he was capable of ſerving them; and that they deſired the Deponent would give an Account what he could ſay againſt them, that they might view and correct it: That on *Saturday* the 29th of *March*, Mr. *Reading* came to the Deponent's Lodgings, as he expected he would, and he (the Deponent) had concealed Mr. *Speke* and his own Man there, ready againſt he came: That Mr. *Reading* ſaid when he came into the Room, *Is there no body here that can over-hear us?* And the Deponent anſwered, *No*; and asked Mr. *Reading* what the Lords in the *Tower* ſaid, for he was to give in his Anſwer, to the ſecret Committee that Night; but Mr. *Reading* deſired him to put it off till *Wedneſday*, and he would bring him their final Anſwer; and the Deponent agreed to put it off till *Monday:* whereupon Mr. *Reading* ſaid, though he had not yet a full Anſwer, as to what the Lords would do, he (the Deponent) might expect a noble Reward; and he had Orders to draw blank Deeds to be ſigned in ten Days after their Diſcharge

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Discharge, for Sums and Estates which they would settle on the Deponent; and he should have a speedy Supply of Money, as soon as it could be got in: That the Lord *Stafford* was cutting down Wood, and selling it, and when he had raised the Money the Deponent should have it; but at present his Lordship had not Money to defray the Charges of his Family. In the mean time Mr. *Reading* said he had Orders to supply the Deponent's present Occasions; and he acknowledged he had had a great deal of Money from him, the Prisoner giving him Gold sometimes when he did not ask it: But when the Deponent objected that he had only a verbal Promise from the Lords, which he could not rely on, Mr. *Reading* said he would engage his Soul and Life to make it good, though they did not think fit to give any thing under their Hands yet.

That Mr. *Reading* desiring to see the Copies of what the Deponent had accused the Queen and Lords, that he might carry those Papers to the Lords and have their Answer; the Deponent pretended they were at his Mother's Lodgings, and went with him thither, to give the other Witnesses an Opportunity to come out of the Places where they lay concealed: That not meeting with the Papers, and returning to his Lodgings, they found Mr. *Speke* and the Deponent's Man there; and having desired Mr. *Speke* to go before them to *Westminster*, Mr. *Reading* and the Deponent fell to writing out what they had agreed upon; and when he inserted any Words that were home against the Lords, Mr. *Reading* would tell him the Law, and what would reach them, and then alter it: That on *Monday* following Mr. *Reading* brought him a Paper of his own Hand-writing, different from the Words they had set down in the Paper on *Saturday*, and which took off the whole Charge of Treason: That the Paper Mr. *Reading* brought was ten times shorter than the former, and that was forty times shorter than that the Deponent had given in to the Secret Committee.

The Court demanding, if he agreed to swear what Mr. *Reading* should direct him? *Bedloe* answered, It was to what he and the Lords should direct: The Prisoner was to give him an Account what the Lords would have him say; and told him that the Lords had corrected the Paper.

Then the Paper being produced, Mr. *Reading* acknowledged it to be his Hand; and that he delivered it to Mr. *Bedloe* before Mr. *Speke*, in the Painted Chamber.

The Court demanding, If he had not the first Paper? *Bedloe* answered, No; Mr. *Reading* carried it to the Lords, and he never had it again: This was the Paper corrected by the Lords, which he was to give to the Secret Committee.

Then the Paper was read, which consisted chiefly of Hear-says, and some other Particulars, that would not have effected the Lives of the Popish Lords; and thereupon Chief Justice *North* told the Prisoner, They should expect a good Account from him, what he had to do to prescribe the Evidence to the King's Witness in writing.

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Speke's *Evidence.*

Mr. *Speke* deposed, That Mr. *Bedloe* daily acquainted him with the Treaties between him and Mr. *Reading*; and that he (the Deponent) came to *Bedloe*'s Lodgings, between five and six in the Morning, on the 29th of *March*, where he and *Bedloe*'s Man being concealed, Mr. *Reading* came in about seven, and having first asked Mr. *Bedloe*, If any body could over-hear them? He answered, No; and then fell upon the Discourse concerning what Money and Estates the Lords in the *Tower* had promised to settle on *Bedloe*, for his Service in shortening and contracting his Evidence against them, and taking off the Charge of High-Treason (*according to* Bedloe's *Deposition*; and that a Writing was drawn up in pursuance of what they had agreed on, for the Lords in the *Tower* to see and correct; after which it was to be delivered to the Secret Committee: And that the Deponent saw Mr. *Reading* deliver that Paper to *Bedloe* in the Painted-Chamber *Westminster*; and *Bedloe*, immediately after *Reading* was gone, delivered the Paper to the Deponent, which he carried directly to the Lord Privy Seal's Room, where the Committee of Lords used to meet; and there he and Mr. *Wharton* read the said Paper, being all written with Mr. *Reading*'s own Hand.

Wiggins's *Evidence.*

Henry Wiggins, *Bedloe*'s Servant, also deposed, That he lay concealed with Mr. *Speke* in his Master's Room, and heard the Discourse already mentioned between his Master and *Reading*, concerning the contracting and lessening the Evidence against the Popish Lords.

Reading's *Defence.*

Mr. *Reading* said in his Defence, That he attended the Lords in the *Tower*, and others charged with the Popish Plot, by the Leave and Approbation of several Lords of the Secret Committee, particularly the Prince, the Lord Treasurer, and the Marquis of *Worcester*: That the Lord *Stafford* desired him to move for his *Habeas Corpus*, and gave him his Fee: That Sir *Henry Goring* and Sir *John Gage*, desired the same, as did the Lord *Brudenel* and others, and he did accordingly move the Court of *King's-Bench* for their Writs of *Habeas Corpus*; whereupon he was ordered to attend the Attorney General, to know if he would consent to their being bailed, which he would not, till he knew what they were accused of: He *(Reading)* went therefore to *Bedloe* and *Oates*, to know what they charged his Clients with, and if they might be bailed; which Mr. Attorney being satisfied of from their own Mouths, consented to the bailing of several of them; and this occasioned his discoursing several Times with *Oates* and *Bedloe*, concerning the Nature of the several Charges against the Gentlemen accused: That he had also Occasion to attend *Bedloe* about his Pardon; to prove which he called Sir *Trevor Williams*, who deposed, that having a great Opinion of Mr. *Reading*'s Skill in the Law, and desiring that Mr. *Bedloe*'s Pardon should be as perfect as might be, he recommended him to Mr. *Reading* for his Advice in it.

Then the Prisoner went on and said, What he had done in this matter, had been in Friendship to Mr *Bedloe:* That he had sup-

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plied him with ſeveral Guineas, and one or two when he ſaid he wanted Bread: That *Bedloe* acknowleded the Services he had done him; and aſſured him (the Priſoner) when he received the 500 *l.* Reward for diſcovering *Godfrey*'s Murder, he would give him a third Part of it for the Services he had done him, repay whatever he (the Priſoner) had lent him, and gave him the Fees that were due to him: That *Bedloe* ſaid, he was glad he was no longer confin'd in a ſeparate Appartment, and debarred from ſpeaking with *Oates* and *Dugdale*, for now they could lay their Stories together; and that he *(Bedloe)* had ſeveral Witneſſes who would ſwear whatever he bid them; and confeſſed he had not done well in ſome Things, particularly in charging Mr. *Griffith*.

The Lord Chief Juſtice *North* thereupon obſerved, that this was not a fair Way of managing his Defence; either he muſt call *Bedloe* to depoſe upon Oath what he told him, or produce other Witneſſes to prove it: This Kind of Defence indeed was artful enough; but he was not to be ſuffered to calumniate the King's Evidence, without Proof of what he charged them with: He ſhould anſwer to the Facts with which he was charged; all other Things were nothing to the Purpoſe.

Mr. *Reading* replied, Nothing could be more Material, if he underſtood his Defence; and deſired *Bedloe* might anſwer upon Oath, Whether he did not deſire him to ſpeak Truth? But bid him remember, the Land groaned for innocent Blood ſhed already; and if he went on to add Sin to Sin, and charge Men unjuſtly to take away their Lives, poſſibly he might ruin the Nation inſtead of preſerving it.

Bedloe then acknowledged, that *Reading* in publick gave him ſuch Advice, and charged him with the Wrong he had done *Griffith*; but that happened through the Miſtake of thoſe who took up the Uncle for the Nephew.

Then Mr. *Reading* demanded of *Bedloe*, If Mr. *Griffith* did not give him a Gold Watch? *(Intimating, that* Bedloe *accepted the Watch to retract his Evidence againſt* Griffith) *Bedloe* anſwered, He had the Watch, but acquainted the Secret Committee with it preſently.

The Court demanded of *Bedloe*, Whether the ſeveral Sums he received of Mr. *Reading*, were lent him? To which he anſwered, I wonder Mr. *Reading* ſhould ſay I wanted Bread, when I had five Diſhes allowed me every Day *(by the Government;)* declaring That Mr. *Reading* told him, he had Orders from the Lords to let him have what Money he came for, and ſometimes Mr. *Reading* gave him Money when he did not ask it; but confeſſed, he agreed that Mr. *Reading* ſhould have an 100 *l. per Annum*, out of every 1000 *l.* a Year of his Reward.

Then Mr. *Reading* demanded of *Bedloe*, If he did directly or indirectly deſire him to leſſen a Syllable of his Evidence *that was true*? To which *Bedloe* anſwered, He was to have ſuch a Reward for bringing off the Lords as to what they were charged with; and that *Reading* ſaid, he had Orders to draw blank Deeds.

The Priſoner then objected, That the Witneſſes were not lawful Witneſſes; that *Speke*, by his own Confeſſion, was an Eves-dropper, which was a Crime in Law; and deſired that *Bedloe* might anſwer upon Oath, If he did not lay in Coals and Billets at two ſeveral Places to fire the City of *Weſtminſter*?

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The Lord Chief Juſtice *North* interpoſed, and ſaid, the Witneſs was not obliged to accuſe himſelf; and beſides, his Pardon ſet him right againſt all Objections.

Reading replied, the Pardon might remit the Puniſhment, but ſtill theſe Facts would invalidate his Teſtimony; adding, that *Bedloe* firſt propoſed this Buſineſs to him, bidding him tell the Lords *Stafford*, *Powis*, and *Petre*, that if they did not ſecure him a good Reward, he would give ſuch Evidence, as ſhould deprive them of their Lives, and that he had other Witneſſes to back him; but if they would give him a ſuitable Reward, his Teſtimony ſhould do them no Hurt.

The Court demanded, If fifty ſix Guineas were not paid by Mr. *Reading* to *Bedloe*, to induce him to leſſen his Evidence?

Bedloe anſwered, He had ſometimes two Guineas, ſometimes more, at ſeveral Times, which might amount to that Sum; but not ſo much at once.

Witneſſes for the Priſoner.

Then the Priſoner called Mr. *Palmer*, to prove *Bedloe* borrowed Money of him, who depoſed, That *Bedloe* having twenty Shillings in his Hand, Mr. *Reading* came in, to whom *Bedloe* ſaid, I have no more than this, and this I borrowed of my Mother; whereupon Mr. *Reading* gave him two Guineas; and *Bedloe* ſaid, God-a-mercy, thou art an honeſt Man, and my chief Fountain.

The Priſoner then demanded of Mr. *Palmer*, If he did not hear *Bedloe* confeſs he had laid in Fewel to burn the City of *Weſtminſter*?

Bedloe thereupon ſaid, He acknowledged it, and this was Part of the Treaſon the King pardoned: He acknowledged further, That he told Mr. *Reading* he would have ſuch an Eſtate of the Lord *Stafford*'s in *Glouceſterſhire* ſettled upon him; and that Mr. *Reading* told him, he had Orders to draw blank Deeds for the conveying of that Eſtate, to be ſigned within ten Days after his Lordſhip's Diſcharge.

Reading ſaid, he went to the Lord *Stafford* in the *Tower*, and asked him, if he knew one *Jordan*, that *Bedloe* ſaid would ſupport his Evidence? To which his Lordſhip anſwered, That *Jordan* was his Tenant, but he would not give *Bedloe* Six pence; he valued himſelf upon his Innocence and the Infamy of his Accuſers; and he ſhould look upon it as his greateſt Guilt, if he gave *Bedloe* any Thing; and would not promiſe him any Thing directly or indirectly. The Lord *Powis* ſaid the ſame; but added, If *Bedloe* will forbear to charge me unjuſtly, as he has hitherto done, he ſhall find I will do by him like a Gentleman, when I am diſcharged.

The Court anſwered the Priſoner, This made againſt him. *Reading* replied, He could not help it; he thought he was bound to do what he had done, to ſave innocent Blood.

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The Court demanded, If he could juſtify carrying the King's Evidence to the Priſoners, if there was no more in it? The Priſoner anſwered again, He thought there was no Crime in it; and he did it to prevent Perjury, and the ſhedding of innocent Blood.

Whereupon the Chief Juſtice *North* ſaid, Will you take upon you thus to impeach the Juſtice of the Nation? Are not you a Lawyer, and know that no Man may be of Counſel for a Priſoner in Treaſon or Felony, till he is aſſigned? You have ſpoiled your Cauſe, and confeſſed as much as amounts to the whole Charge.

The Priſoner then exhibited a Protection, that *Bedloe* had given one *Prickman*, a Broken Merchant, under Pretence of being one of his Witneſſes; and ſaid, when he found *Bedloe* uſed ſuch Tricks and indirect Means, he thought he ſhould do both the King and the Nation good Service, if he could prevent his ſpilling innocent Blood.

The Court replied, He ought not to take upon him to do this; he ought to have acquainted the King's Council or the Secret Committee with it, if he had ſuſpected *Bedloe*'s Honeſty; and this was but a plauſible Excuſe to cover his corrupt Dealing: And the Chief Juſtice, in ſumming up the Evidence, told the Jury, That the whole Charge had been proved by undoubted Teſtimony, and by the Priſoner's own Confeſſion: Whereupon, after a very ſhort Receſs, they brought him in *Guilty*.

He is convicted.

The Chief Juſtice afterwards paſſing Sentence ſaid, The Priſoner's Offence was highly aggravated, becauſe he was a Counſel and knew the Law, and he thought therefore the Court ought to ſhew more than ordinary Severity againſt him, giving Judgment, *That he ſhould be fined a thouſand Pounds, and be impriſoned for a Year; and that he ſhould be ſet in the Pillory in* New Palace-Yard. However as his Offence was ſuch as had enraged the People to that Degree, that he might be in Danger of his Life, they had ordered the Sheriff and Juſtices to keep the Peace, ſo that no other ill Conſequences might happen to him, but only the Shame and Infamy he was condemned to, which he thought he deſerved as well as ever any Man did, that was convicted; and on the *Monday* following Mr. *Reading* was ſet in the Pillory, in Purſuance of his Sentence.

The Sentence.

Remarks. This ſeems to have been a very nice Caſe, and a Caſe that ſeldom happened, before ſuch extravagant Rewards were offered to raſcally Knights of the Poſt, to prove imaginary Plots, and ſwear innocent Gentlemen out of their Lives. Lord *Shaftesbury*, and the Republican Party, finding their Intereſt decline every Day, either trumped up this pretended Plot themſelves, or improved it, and encouraged the vile Forgers of it to charge every Man as a Conſpirator, that was eminent for oppoſing their Fanatick Schemes.

Their Artillery was not levelled againſt Popery; their ſeeming Zeal againſt that, and its Profeſſors, only ſerved to cover their Malice againſt the Adminiſtration, and all thoſe that were real Friends to the Conſtitution in Church and State. They had long charged the King, and his Friends, with a Deſign to introduce Popery and arbitrary Power; and when they found theſe Suggeſtions derided, and treated with the Contempt they deſerved, they changed their Batteries, and charged the Roman Catholicks, and many Proteſtants of Figure, with a Conſpiracy againſt the King's Life; with a Deſign to fire the City, and maſſacre all *good Proteſtants*; repreſenting the impending Danger in ſuch tragical Terms, and as ſo ſudden and unavoidable, that the Nation were alarmed and confounded; and no Man, for ſome Months, ſeemed to have the Exerciſe of his Reaſon.

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Every Story, how improbable and inconſiſtent ſoever, and every Man, though never ſo inconſiderable and infamous, was attended to, and credited, if he offered to give any new Light into this pretended Plot: And, that they might never want perjured Villains to ſupport the Forgery, the Faction in a manner compelled the King to offer ſuch Rewards to the Diſcoverers, as were too great Temptations, to ſuch ſort of People, to ſwear whatever their crafty Leaders ſuggeſted to them: Nay, the People were taught to look upon the Title of a King's Evidence, as more honourable than that of a Nobleman or firſt Miniſter: Theſe Witneſſes were lodged in the King's Palace; had Tables allowed them there; were *Hoſanna'd* whenever they went abroad, and ſtiled our DELIVERERS, and THE SAVIOURS OF THE NATION: And as it was neceſſary to make ſome ſacrifices, to ſpill ſome Noble Blood, to confirm the People in the Belief of the Conſpiracy, five Popiſh Lords were charged with the Treaſon, and committed to the *Tower:* Nor did the Queen her ſelf eſcape their Malice. They proceeded ſtill farther, and accuſed the firſt Miniſter, and ſeveral Men of Quality, and Members of the Commons, as Accomplices in this Plot, that were zealous Proteſtants, and eminent for their Loyalty and Attachment to the Church of *England:* And indeed it was purely for the Sake of theſe, becauſe ſuch Men were ſuffered to be at the Helm, that the Nation was thrown into this Confuſion by the Whigs: The Deſign was, to perſuade the People that theſe Gentlemen were Popiſhly affected, and they themſelves were the only Friends to the Conſtitution; nay, that all the Friends of Monarchy and Epiſcopacy, as well as the Papiſts, were in a Plot to deſtroy the Proteſtant Religion, and the antient Government.

In theſe circumſtances, it was no wonder, that the Popiſh Lords, who found they were to be firſt ſacrificed, caſt about to countermine the Stratagems of their Enemies, and even offered the Witneſſes ſuch a Share of their Eſtates as might be equivalent to the Rewards offered to deſtroy them, that the Witneſſes might not be under ſuch ſtrong Temptations to diſguiſe the Truth, and take away their Lives.

This, ſurely, was allowable in the Lords, who knew themſelves innocent, whatever Interpretation the Lawyers might put upon it; nor could it be highly criminal in their Agent, Counſellor *Reading*, if he believed them innocent;

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cent; especially if he desired the Witness *Bedloe only to speak the Truth*, as he seems to acknowledge. I make no question but there was a Bargain going forward between the Lords and *Bedloe*, for softening his Evidence; and there is Reason to believe, from some Circumstances in the Trial, that *he first offered them his Service by* Mr. *Reading*, with whom he was very intimate, and to whom he had been much obliged: That *Bedloe* was a Villain, is very certain by his own Testimony; sometimes contradicting, and at others enlarging his Evidence, to serve a Turn; Nay, we find, he made such use of his Privilege of being a King's Witness, that he took upon him to give Protections to broken Tradesmen, under Pretence they would support his Evidence, and make further Discoveries of the Plot. He had proposed to himself some thousand Pounds a Year in Lands, for doing Justice to the Lords; for he says, in the Trial, that Mr. *Reading* was to have an hundred Pounds *per Annum* out of every thousand a Year he was to have for his Reward. How he came not to accept the Offers of the Lords, I cannot certainly determine: Whether he thought he should get more by Lord *Shaftesbury*, and his Whig Friends, when he saw himself so caressed, and arrived at that Height of Power and Influence, as to distress the King and Government by his Perjuries; or whether he was afraid Mr. *Reading* would one Day lay open his Villanies, and he should lose the promised Reward, is not easy to say: But all the World are satisfied, he was governed by corrupt Motives, both in the contracting and enlarging his Evidence. 1679. 31 Car. II.

The Court indeed told Mr. *Reading*, that, if he had suspected *Bedloe*'s Veracity, he ought to have communicated his Suspicions to the Privy Council, or the Secret Committee: But this was not the Way to have served his Clients; neither the Privy Council, nor the King himself, durst, at that time, protect the most innocent Roman Catholick against the Rage of the Faction, who had so infatuated a Majority of the Commons, that they ran precipitately into all their wild Schemes. Whoever endeavoured to stem the Torrent, was exposed to inevitable Ruin; and it was next to a Miracle, that the Constitution it self was preserved: So strongly did the Fanatick and Republican Spirit operate upon the Senators of those Days.

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The Trial of the five Jesuits.

The Trial of THOMAS WHITE, *alias* WHITEBREAD, Provincial of the *English* Jesuits; WILLIAM HARCOURT, Rector of *London*; JOHN FENWICKE, Procurator for the *English* Jesuits; JOHN GAVAN, *alias* GAWEN, and ANTHONY TURNER, Popish Priests and Jesuits, for *High-Treason*, at the *Old-Baily*, the 13th of *June*, 1679. 31 *Car.* II. 1679. 31 Car. II.

The Indictment.

THE Indictment set forth, That *Thomas White* and the rest of the Prisoners, with other false Traitors, did on the 24th of *April*, in the 30th Year of the King, advisedly, maliciously, and traiterously, compass, imagine, and intend to stir up Sedition and Rebellion, and to procure a miserable Slaughter of the King's Subjects; to depose and murder his Majesty; to levy War, and to subvert the established Religion and Government; and that, in order to accomplish their said traiterous Imaginations and Purposes, they the said *Thomas White*, *&c.* did on the 24th of *April*, in the said 30th Year of the King, at the Parish of *St. Giles*'s *in the Fields*, in the County of *Middlesex*, traiterously assemble, consult, and agree, to murder his Majesty, and subvert the established Religion and Government: And further agreed to say a certain Number of Masses for the Soul of *Pickering*, and to give *Grove* a Sum of Money, as a Reward for murdering the King. That they took the Sacrament to conceal the said Treasons, and did at the same Time and Place, persuade and excite four other Persons to murder his Majesty, against the Duty of their Allegiance, *&c.*

White *and* Fenwicke *object, they had been tried already for the same Offence.*

The Prisoners being arraigned, *Whitebread* and *Fenwicke* objected, that they had already been tried for the same Facts, a Jury charged with them, and the Evidence found insufficient, and then the Jury was dismissed without giving a Verdict; and they apprehended they could not be put in Jeopardy of their Lives a second Time for the same Cause; they ought, at the former Trial, either to have been condemned or acquitted.

Their Objection overruled.

The Court answered, it was in their Discretion to discharge the Jury without taking a Verdict, where Witnesses were wanting, or there was any Accident of the like Nature: Both the Chief Justices and most of the twelve Judges, who were upon the Bench, declared that this was their Opinion.

Then the Prisoners severally pleaded *Not Guilty*, and the Jurors being called, they made no Challenges, but to those who had been Jurors in former Trials for the same Facts they stood charged with.

Sir *Creswel Levinz* opening the Evidence for the King, observed, that the Prisoners were all Popish Priests, and, as such, were guilty of High-Treason by the 27th *Eliz.* and ought to die for that; but they were now charged with a Treason of a blacker Nature, and so would not have the Satisfaction of saying *they died for their Religion:* And notwithstanding the said Statute had been made an hundred Years, there were very few Examples of Priests who had suffered purely for their Religion, though many had suffered for such Crimes as the Prisoners were charged with. On the contrary, in Popish Countries they had murdered the Protestants by thousands, without Law or Justice; particularly at *Mirandola*, at *Paris*, in *Ireland*, and in *Piedmont*.

Then

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Oates's Evidence.

Then *Titus Oates* was produced as an Evidence of the Plot, and depoſed, that the Priſoner *Whitebread* appointed a Conſult to be held at *London*, in the Month of *April*, 1678. and a Conſult was held accordingly, where the Priſoners *Whitebread*, *Fenwicke*, *Harcourt*, and *Turner* were preſent, and ſigned a Reſolution, that *Pickering* and *Grove* ſhould proceed in attempting to kill the King: That *Whitebread* ſigned this Reſolution at *Wild-Houſe*, *Fenwicke* at his Lodgings in *Drury-Lane*, and *Harcourt* at his Chamber in *Duke-ſtreet*; that the Deponent *Oates*, and nine or ten more Jeſuits, came from *St. Omers* to *London* to be at this Conſult; and when it was over they return'd again; particularly *Whitebread* arrived at *St. Omers* the Beginning of *June*, in order to viſit the *Engliſh* Colleges in *Flanders*, and ſtayed at *St. Omers* till the tenth of *June*, and in ſome of his Diſcourſes with thoſe Fathers, ſaid, *He hoped to ſee the black Fool's Head at* White-hall *laid faſt enough*; *and that if his Brother ſhould appear to follow his Foot-ſteps, his Paſſport ſhould be made too, and he alſo ſhould be diſpatched:* That the Deponent, on the 13th of *June*, *O. S.* receiving Orders to come to *England* again, took Paſſage in the Packet-boat the 14th, and arrived at *London* the 17th of *June*, and in *July* following came over *Richard Aſhby*, with Inſtructions from the Priſoner *Whitebread*, to offer Sir *George Wakeman* (the Queen's Phyſician) ten thouſand Pounds to poiſon the King: That *Aſhby*, two or three Days after his Arrival, *viz.* the latter End of *July*, or the Beginning of *Auguſt*, went to the *Bath*, and the Priſoners *Fenwicke* and *Harcourt* adviſed him to give an Account of Matters to the People in *Somerſetſhire*; and *Fenwicke* ſaid, he did not queſtion before he came to Town again, to have the Gentleman at *White-hall* (whom they called *the black Baſtard*) diſpatched.

That the Priſoner *Gavan*, in the Month of *June*, 1678. wrote Letters to the Fathers at *London*, giving an Account of their Affairs in *Staffordſhire* and *Shropſhire*, and of the Diligence of one Father *Ewers* in thoſe Parts: And in *July* or *Auguſt*, *Gavan* came to Town, and the Deponent met him at *Ireland*'s Chamber, where he heard him give the ſame Account of the Affairs of *Staffordſhire* and *Shropſhire* as he had done in his Letters before. That the 12th of *Auguſt* (he was poſitive it was between the 8th and 12th) Mr. *Ireland* took his leave of them, as though he was going to *St. Omers*, and *Fenwicke* the Priſoner was to be Treaſurer and Procurator in his Abſence; that about the 21ſt of *Auguſt Fenwicke* and *Harcourt*, and ſome other Fathers, met together at *Wild-Houſe*, and there lay before them fourſcore Pounds, moſt of it in Guineas, which was to be paid to the four *Iriſh* Ruffians who were to murder the King at *Windſor*, and *Coleman* (that was executed) came in, and gave the Meſſenger a Guinea to haſten his Journey; and the Company adjourning from thence to *Harcourt*'s Chamber, the Money was paid to the Meſſenger there: That the Day before, or the Day after this, there was a Conſultation of the *Benedictine* Monks, where *Fenwicke* and *Harcourt* were preſent, and related, they had received an Account from Archbiſhop *Talbot* in *Ireland* of the Papiſts conſpiring the Death of the Duke of *Ormonde*, and deſiring that Commiſſions and Money might be ſent over thither for carrying on the Deſign; and that *Fenwicke* actually ſent Commiſſions to *Cheſter* by a ſpecial Meſſenger, and ſome by the Poſt; and *Fenwicke* gave the Deponent Money for his Expences, and admoniſhed him to procure Maſſes to be ſaid for carrying on the Deſign: That on the 3d of *December*, the Deponent, hearing *Whitebread* was come to Town, went to his Chamber, but could not ſee him; and going again the next Morning, *Whitebread* reviled him and ſtruck him, imagining the Deponent had made a Diſcovery; for the Gentleman, the Deponent had communicated the Thing to, and who went to the King about it, being dreſſed like the Deponent, they were informed it was him; but the Deponent juſtifying himſelf to *Whitebread*, he ſaid he would be Friends with him, if he could learn who had done it; and he further depoſed, that on Sir *George Wakeman*'s refuſing to accept 10,000 *l.* for poiſoning the King, *Whitebread* ordered 5000 *l.* more to be offered him, which he accepted.

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Then *Whitebread* demanded of *Oates*, how long he was acquainted with him before the Conſult in *April*; and *Oates* anſwered he never ſaw *Whitebread*'s Face till then.

It being demanded of *Oates*, how long he ſtaid in *London*, he ſaid, from the Time he came over to *England*, to the Time he went back again, was under twenty Days; and that Father *Williams* Rector of *Wotton*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preſton*, and others, came over with him.

The Priſoners demanding if Sir *Robert Brett* and Mr. *Nevil* came with him, he ſaid, he believed they might; and being told he had aſſerted it poſitively in his Narrative, the Lord Chief Juſtice ſaid, a Man might venture to write more than he would ſwear; to which *Fenwicke* replied, his Narrative was upon Oath; whereupon the Chief Juſtice obſerved, that a Pamphlet was no Evidence; they muſt bring the Perſon that heard him ſwear it, to prove it.

A printed Narrative no Evidence.

Then the Priſoners deſired *Oates* might aſcertain the very Week when he ſaw them in *London*, and the Places where, *&c.* that they might have an Opportunity to ſhew they were in other Places; to which the Chief Juſtice anſwered, he perceived their Defence would be little elſe but Captiouſneſs, to diſprove the Witneſſes in Circumſtances of Time, Place, Perſons, and Numbers, which were but little Matters to the Subſtance; and *Dugdale*, another Witneſs, was ſworn. (Dugdale *was Steward to Lord* Stafford, *and run away with* 300 *l. of his Lord*'s *Money.)*

Partiality of the Court.

This Witneſs depoſed, that the Priſoner *Whitebread* wrote a Letter to Mr. *Ewers* the Jeſuit, (the Deponent's Confeſſor) which he ſaw at *Tixhall*, the Lord *Aſton*'s Seat in *Staffordſhire*; for all the Letters that came to Mr. *Ewers*, were directed to the Deponent, and encloſed in Mr. *Groves*'s Letters; and this Letter he broke open and read, wherein *Whitebread* adviſed *Ewers* to chuſe them that were

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truſty ſtout Fellows, and ſuch as were hardy and deſperate, *(to kill the King)* and that *Gavan* and ſeveral others had engaged the Deponent in the Conſpiracy againſt the King's Life; that there were ſeveral Conſultations about it at Mr. *Ewers*'s Chamber, at Mr. *Gavan*'s, and at the Deponent's Chamber at *Tixhall*; and one particularly in *September* then laſt paſt, where *Gavan*, Lord *Stafford*, and ſeveral others, were preſent; and the Deponent was to be ſent to *London*, to aſſiſt in executing the Deſign, and to be under the Tuition of *Parſons:* Then *Gavan* bid the Witneſs look him in the Face, if he could; but the Court told *Gavan*, he muſt not threaten the King's Witneſſes.

Gavan averred, he never was in *Dugdale*'s Chamber, and demanded of *Dugdale*, in what Room of the Lord *Aſton*'s Houſe this Diſcourſe was, and who were preſent.

Dugdale anſwered, it was in the little Parlour, and in Mr. *Ewers*'s Chamber; and that Mr. *Ewers*, Mr. *Lawſon*, Mr. *Petre*, and others, were there: That *Gavan* well knew the Deponent's Zeal, for he had given them 400 *l.* to pray for his Soul, and carrying on this Deſign; and afterwards, when they ſaid they were afraid they ſhould want Money for carrying it on, he promiſed them an 100 *l.* more, and *Gavan* aſſured him he ſhould be canonized for a Saint.

That *Gavan* ſaid farther, that there was a Letter come from *Paris* into the Country through Mr. *Harcourt*'s Hands, importing, that it was their Opinion at *Paris* and *St. Omer*'s, that they ſhould fling the King's Death on the Presbyterians, and then they might bring the Epiſcopal Men into their Party, to revenge themſelves upon them: That there was to have been a Maſſacre alſo; and if any eſcaped it, who were not Papiſts, there was to be an Army to cut them off: And *Gavan* endeavoured to prove by Scripture, that it was lawful and good to deſtroy the King, or any one, for the Sake of Religion; and obſerved, that the Reliques of Father *Garnet* (executed for the Powder Plot) had wrought great Miracles beyond Sea.

The King's Counſel demanding of *Dugdale*, how many Letters of *Harcourt*'s he had intercepted, he anſwered, he believed an hundred; and particularly one, which gave an Account of the Death of Sir *E. Godfrey* the *Monday* before he was found, and muſt be written on the *Saturday* he was killed, for the Words were, *This very Night Sir* Edmund-bury Godfrey *is diſpatched*; and that the next Day, being *Tueſday*, he went to an Alehouſe near his Lord's Houſe, and asked, if they did not hear of a Knight that was killed at *London:* Then

Chetwind's *Evidence.*

Mr. *Chetwind* was ſworn, and depoſed, that he was in *Staffordſhire* laſt *October*, and on a *Tueſday* that Month, one Mr. *Sanbridge*, a Kinſman of the Lord *Aſton*'s, told him he had been at *Eld*'s, and that a Girl of the Houſe acquainted him Mr. *Dugdale* had been there, and reported there was a Juſtice of Peace of *Weſtminſter* killed, and on the *Saturday* following his Letters brought down the News of it; and being at *Litchfield* the ſame *Saturday*, News came thither that Sir *E. Godfrey* was found murdered.

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Whitebread the Priſoner then demanded of *Dugdale*, whether thoſe very Words *killing the King* were in the Letter he wrote; to which *Dugdale* anſwered, that to the beſt of his Remembrance, thoſe were the very Words that the Letter came by the ordinary Poſt, directed to him (the Deponent.)

The Chief Juſtice demanding of *Dugdale*, if he knew any thing againſt the Priſoner *Turner*, *Dugdale* anſwered, he agreed to all in his hearing at Mr. *Ewers*'s Chamber in *Tixhall*, and at other Places, about two Years ago; to which *Turner* replied, he had not been in *Staffordſhire* theſe four Years.

Prance's *Evidence.*

Then *Prance* (Silverſmith to the Popiſh Chapels) was ſworn, and depoſed, that about a Year before he made *Harcourt* the Priſoner an Image of our Lady, and when he paid him the Money for it, he told him there was a Deſign of killing the King.

That the Deponent was with Mr. *Fenwicke* the Priſoner, *Ireland*, and *Grove*, at *Ireland*'s Lodgings about a Fortnight before the laſt *Michaelmas*, and they were talking of 50,000 Men to be raiſed to carry on the Catholick Cauſe, and ſettle the Catholick Religion; and *Fenwicke* ſaid they were to be commanded by the Lords *Arundel*, *Bellaſis*, *Petre*, and *Powis:* And the Deponent demanding, what poor Tradeſmen muſt do, if there were Civil Wars, *Fenwicke* ſaid, he need not fear, for he ſhould have Churchwork enough in making Images, Chalices, Crucifixes, Vaſes, *&c.* And that *Harcourt* the Priſoner had in like manner diſcourſed with the Deponent about the Plot, and particularly when he paid him 44 *l.* for four Candleſticks.

Bedloe's *Evidence* confeſſes he *ſuppreſſed* Part of it.

Then *Bedloe* was ſworn, and depoſed, that he did not teſtify Half what he knew at the former Trial of *Whitebread*, *Fenwicke*, *Ireland*, *&c.* becauſe he had promiſed Mr. *Reading* to bring off *Whitebread* and *Fenwicke*, that he might put a Confidence in him concerning his Evidence againſt the Lords in the *Tower* ---- But now he depoſed, that he ſaw *Fenwicke* at the Conſult, and heard *Whitebread* tell *Coleman*, at *Harcourt*'s Chamber, the Manner of ſending the four Ruffians to *Windſor* to kill the King, about the Month of *September*; and that he ſaw *Harcourt* take eighty or an hundred Pounds out of his Cabinet for them, and pay the Meſſenger, giving him alſo a Guinea that Mr. *Coleman* left to drink his Health; that it was agreed alſo at *Harcourt*'s Chamber, that *Grove* ſhould have 1500 *l.* and *Pickering* as many Maſſes ſaid for his Soul as amounted to that Sum, at Twelve-pence each Maſs; that *Pickering* had been checked and diſciplined by his Superiors for having miſſed ſo many Opportunities of killing the King: Once the Flint of his Piſtol was looſe, at another Time there was no Powder in the Pan, or he had loaded only with Bullets. That when *Whitebread* was at Mr. *Harcourt*'s Lodgings, it was alſo agreed by them, that ſince Sir *George Wakeman* would not accept 10,000 *l.* he ſhould have 15000 *l.* but *Ireland* ſaid, the moſt certain Way of diſpatching the King was, in his Morning

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Morning Walks at *New-Market:* That *Fenwicke* and *Conyers* accordingly went thither, and he heard there were ſeven or eight of them. That Mr. *Harcourt* was no Stranger to the Deponent's bringing over Pacquets and Portmanteaus from beyond Sea: He had brought Letters from *Watton*, *St. Omers*, *Bruges*, *Paris*, *Villadolid*, and *Salamanca*, and carried Anſwers containing an Account of the Plot; and moſt of theſe were lodged in *Harcourt*'s Hands, and he had been ſent from *Harcourt* to *Langhorn* with Papers relating to this Affair, to regiſter them.

That he ſaw *Harcourt* give Sir *George Wakeman* a Bill of Exchange for 2000 *l.* and tell him it was in Part of a greater Sum; and Sir *George* anſwered, that 15000 *l.* was but a ſmall Reward for ſettling Religion, and preſerving three Kingdoms from Ruin; and if it were not for a certain Woman (the Queen) he would not undertake it; but for her he would do any thing. And that Sir *George Wakeman* read the Bill, put it up, and went and received the Money.

Then the King's Counſel produced a Letter that was found among *Harcourt*'s Papers from one *Petre*, at *St. Omer*'s, a Jeſuit, giving an Account that *Whitebread* had appointed a Conſult in *April*, concerning ſome conſiderable Matters that required Secrecy; the Tenor whereof was, that the Provincial *(Whitebread)* had appointed all thoſe, who had Suffrages at the intended Congregation to be in *London* the 21ſt of *April*, *O. S.* in order to its Beginning the 24th; and if his Occaſions would not permit him to be preſent, he ſhould ſignify ſo much, that his Abſence might be ſupplied; but that none ſhould go to *London* much before the Time, or appear in Town till the Conſult was over, leſt Occaſion ſhould be given to ſuſpect the Deſign: *Finally*, *Secrecy*, *as to the Time and Place*, *is much recommended to all thoſe that receive the Summons*, *as it appeared of its own Nature neceſſary.*

A Letter appointing a Congregation of Jeſuits, the 24th of April.

The Chief Juſtice hereupon deſired *Harcourt* the Priſoner, to expound this Letter concerning this Meeting and Privacy.

To which *Harcourt* anſwered, the Letter was not written to him, but to one who had a Right to Vote in their Congregation, which was held once in three Years; the Chief Buſineſs whereof was, the ſending a Procurator to *Rome*; and Secrecy was very fit to be recommended, as they lived in a Country where they were an Eye-ſore, and might give Offence by their meeting in ſuch Numbers.

The Chief Juſtice replied, this was a forced Conſtruction: Could it be ſuppoſed this Secrecy was only required on Account of their chuſing an Officer? The Priſoners urged again, that their Lives depended upon it; and *Whitebread* entring on his Defence ſaid, He thanked God he was not afraid to die, but would not die unjuſtly: Life was a Thing not to be thrown away; but without Contradiction, Men's Lives might be taken away by Perjury, as well as by a Knife or a Piſtol; and no Man's Evidence ought to be admitted, that was not a lawful Witneſs, which Mr. *Oates* was not; and he hoped he might, without Offence, ſay that he was perjured; for he depoſed that he came over, and was preſent at the Conſult the 24th of *April*, and that he *(Whitebread)* ordered him to do ſeveral things, and diſcovered the whole Plot to him; but it was highly improbable he ſhould truſt a Man in ſuch a Buſineſs, whom, by his own Confeſſion, he never ſaw till the Time of the Conſult; he ought rather to have been ſent to *Bethlem* than *Newgate*, had he been ſo imprudent: Beſides, *Oates* was a Man that had nothing to ſubſiſt on, but what he had from them.

Whitebread's Defence.

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The Chief Juſtice anſwered, it was no Wonder they ſhould take a Man into their Confidence, whom they had maintained abroad for a conſiderable Time.

Whitebread replied, his Predeceſſor had maintained him; but when he came to be Superior, he found him not fit for the Purpoſes he pretended to: For firſt, it was doubtful if he was a good Catholick; ſecondly, he led a very idle Life, and was very deſirous of being entertained by them; whereupon they deſired *Oates* to retire ſomewhere elſe, and to induce him to do ſo, gave him a good Suit of Clothes, a Peruke, and four Pounds in his Pocket, which *Oates* promiſed to repay them again, when he had ſold his Library he boaſted of in *London*; but he never did: And urged that there was a wide Difference between doing a charitable Act to a Man in Want, and a Scholar, and truſting him in ſuch an Affair as that. And to ſhew that *Oates* could not be at the Conſult the 24th of *April*, he ſaid, they ſhould prove that he was not out of *St. Omers*, from the 10th of *December* to the 23d of *June*, above one Night. He deſired the Court alſo to conſider, how improbable it was he ſhould write ſo plainly, of *a Deſign to kill the King*, and ſend the Letter by the common Poſt to *Dugdale*, a Perſon he never ſaw but once.

Fenwicke's Defence.

Fenwicke in his Defence; deſired the Court to obſerve the Tenor of the Evidence againſt him; eſpecially that of *Oates*, who ſwore he ſaw ſuch and ſuch Letters. Was it poſſible he ſhould ſhew ſuch Letters to a Man that had been turned away from St. *Omers* for his Misbehaviour? Beſides, he had a thouſand Letters taken upon him, in which there was not any thing to be found tending to a treaſonable Deſign: That there were taken upon him alſo five or ſix thouſand Pounds in Bills and Bonds, as well as Letters; and it was ſtrange this Deſign ſhould not appear in any of them.

The Chief Juſtice anſwered, it was much more ſtrange, that One ſuch Letter ſhould be taken: He believed *Harcourt* would not have ſuffered the Letter that was read to have been ſurprized, if he had thought it would have been of ſuch Conſequence, and the Senſe have appeared ſo criminal.

Partiality of the Court.

Then the Priſoners called their Witneſſes, who were Students of the *Engliſh* College at *St. Omers*, being ſixteen in Number; but before they were ſuffered to Speak, the Court obſerved they were all Roman Catholicks, and might have a Diſpenſation for what they ſaid.

The Evidence of the St. Omers Students for the Priſoners.

Theſe Gentlemen of *St. Omers* depoſed, that *Oates* was in the College of *St. Omers* (except one Night) from *Chriſtmas* to *June* 1678,

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1678, and consequently could not be at the Consult held at *London* the 24th of *April*, as he pretended.

Some of them particularly deposed, that they dined with *Oates* at *St. Omers* that very Day he said he came over, *viz.* the 25th of *April*, *N. S.* That *Oates* went into the Infirmary the same Day, and fell out with a Gentleman there.

Others deposed, that they could not but take Notice when *Oates* was absent, because all the Students dined in one Room, and *Oates* had a distinct Table by himself, between the Lads and the Religious; for though he went to School with the Boys, yet being a Man, he was allowed the Privilege of sitting by himself at Dinner.

Others deposed, that *Oates* was put to read in the Sodality the 25th of *March*, 1678. and that he read there every *Sunday* Morning at Six a Clock, from that Time till *June* following, when he went away.

John Hall, the Butler of the College, deposed, that he saw Mr. *Oates* at *St. Omers*, all the Months of *April* and *May*, and till the 23d of *June*, when he went away; that the Deponent served *Oates* with Bread and Beer during that Time, except when he was in the Infirmary, which he thought was four or five Days, and that he had this Reason to remember him; that he laid his Table at a particular Place near the Door, where he always sat.

Other Witnesses deposed, that several of the Persons, *Oates* had sworn came over with him, were then in *Flanders*.

Oates's Reply to this Evidence. Partiality of the Court.

To this *Oates* replied, that the Witnesses were Papists and Jesuits, and would swear any thing for their Cause; and the Lord Chief Justice observed, that though Papists were competent Witnesses in Law, yet they were of such Principles, that the Jury ought to give them but little Credit; *(At which the People gave a great Shout;)* Whereupon the Chief Justice said to the Prisoners, they must pardon the People's shouting; for they had so turned their Hearts, that a Papist would hardly be able to live in *England*. *(Then the People shouted again;) Gavan* the Prisoner answered, *If there be but a Place in Heaven for us, I am contented*; and brought Witnesses, to prove that he was in *Staffordshire* at the time *Oates* swore he was in *London*, *viz.* in *July* 1678.

Whitebread, the Prisoner, desired he might prove that *Oates* was mistaken in the Evidence he gave at *Ireland*'s Trial: The Chief Justice answered, that would be to try *Ireland*'s Cause over again. *Whitebread* replied, if *Oates* was convicted of Perjury in one Case, he was not to be believed in another: But the Chief Justice told them, they were not to take Notice of what was done at a former Trial, unless they could produce a Record of *Oates*'s Conviction. And it was demanded of every one of the Prisoner's Witnesses, before they gave their Evidence, if they were Papists? Whereupon *Harcourt* the Prisoner observed, if their Witnesses could not be looked upon as good Witnesses, because they were Papists, they must renounce all Intercourse with other Countries.

The Court answered, their hearing them shewed they looked upon them as good Witnesses; but a Witness was of more or less Credit according to the Circumstances; and therefore they thought it was a proper Question to ask their Witnesses, if they were Papists?

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To which *Harcourt* replied, every one of the Witnesses on the other side were known to be bad, flagitious Persons, Men of desperate Fortunes, that got their Livelihood by Swearing; and produced Witnesses to prove that *Ireland* was in *Staffordshire* the Beginning of *September*, when *Oates* swore he was at Mr. *Harcourt*'s Chamber in *London*, and borrowed twenty Shillings of Mr. *Ireland*.

But the Court told the Prisoners, they must not charge *Oates* with what he had said at a former Trial: However the Lord Chief Justice afterwards observed himself, that *Oates* had sworn that *Ireland* was in *London* in *August*, and the Beginning of *September*, and said that the Prisoners ought to have Right done them, and were at Liberty to disprove it; whereupon Sir *John Southcott*, the Lady *Southcott*, Mr. *Edward Southcott*, and other credible Witnesses, were called by the Prisoners, and deposed, that *Ireland* was in the Country in *August*, and the Beginning of *September*, when *Oates* had sworn he was in *London*; and Captain *Hill* deposed, that *Bedloe*, another of the King's Witnesses, was a Prisoner in the *Marshalsea*, and lived upon the common Basket; to which the Lord Chief Justice answered, *Bedloe* might be an honest Man for all that.

Whitebread the Prisoner objected, that *Bedloe* at his last Trial deposed, that he had nothing to say against him; and now charged him with great Matters: So that it was evident he had falsified his Oath; for if he was then sworn to depose the Truth, the whole Truth, and nothing but the Truth; and he did not swear the whole Truth then, he was perjured; and if he did swear the whole Truth then, he could have nothing to charge him with now.

To which Chief Justice *North* answered, that *Bedloe* was then in Treaty with *Reading*, and to beget a Confidence in him, that he would serve the Popish Lords and bring them off, he was easy, as to the Prisoner *Whitebread* and lessened his Evidence, at that time: However, he told the Jury, they ought to consider the Objection that was made to *Bedloe*'s Testimony.

Then the King's Counsel called some Witnesses to support *Oates*'s Evidence, and prove that *Ireland* was in *London* in *August* and the Beginning of *September*; and that *Oates* was in *London* the 24th of *April* 1678. at the Consult, as he had sworn.

Other Evidence to support Oates's

The first deposed, that she saw *Ireland* standing at his own Door, as she passed by, in *August* 1678. Another swore, that he saw *Oates* in the Street, in a Disguise, the latter end of *March*, or the Beginning of *April*; and a Third swore, she saw *Oates*, in a Disguise, at Sir *Richard Barker*'s in *May*; and a Servant swore, he saw *Oates* at his Master's, Sir *Richard Barker*'s, the Beginning of *May*, and spoke to him.

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Sir *Richard Barker* depoſed, that he ſaw *Oates* in *June*, or *July*, 1678, in *London*; and his Servants told him they had ſeen *Oates* the *May* before, in two ſeveral Diſguiſes: Another Witneſs depoſed, that he dined with *Oates* at *Iſlington*, the Beginning of *May* 1678, and that he had a Summer Suit on, and a Green Knot upon his Shoulder.

Whitebread the Priſoner hereupon obſerved, that *Oates* at his firſt Trial, could not name any one Perſon that had ſeen him in *England*, and pretended to be but ſix Days in *London*; and now brought Witneſſes to prove he was in *London* moſt part of the Summer; ſo that either he or his Witneſſes muſt be perjured.

The Chief Juſtice anſwered, they made their Defence to depend upon an Uncertainty of Time, which no Man could ever remember; but bid them ſay what they could for themſelves: Whereupon *Gavan* the Priſoner continued his Defence, and ſaid, he was charged by one Witneſs with a Fact committed in *London*; and by another Witneſs with another Fact committed in *Staffordſhire*, a different County; and deſired the Opinion of the Court, whether theſe were two Witneſſes, ſuch as the Law required? To which it was anſwered, that this had been ſettled in Sir *Henry Vane*'s Caſe, who was indicted for levying War; and one Witneſs proved the levying War in one County, and the other his levying War in another County; and though they were but ſingle Witneſſes of ſingle Facts, yet, both coming up to the Charge in the Indictment, they were adjudged ſufficient to maintain it: So here, one Witneſs proving a Conſpiracy to kill the King in this County, and another proving a Conſult with other Perſons againſt the King's Life in *Staffordſhire*, theſe were two Witneſſes to the ſame Treaſon, and ſufficient in Law. *Gavan* afterwards made ſolemn Proteſtations of his Innocence, and obſerved that he was not of Age to be at the Conſult in *April*; appealing to the Jury, if the two Witneſſes produced againſt him could be deemed credible Witneſſes; for no Man, he apprehended, could be a good Witneſs, that was not an honeſt Man: That *Oates*'s Evidence probably proceeded from Malice, having been turned out of the College of *St. Omers* and diſguſted; beſides, his Evidence had been proved falſe in ſeveral Inſtances, by ſixteen Witneſſes; and though he was not convicted of theſe Perjuries before, yet they made him appear to be no credible Witneſs: That the Teſtimony of thoſe, who only ſaid they ſaw *Oates* paſſing by, was not to be brought into Competition with that of thoſe Sixteen, who converſed with him daily. Beſides, *Oates* contradicted his own Witneſſes, by ſaying he was in *London* only ſix Days, when they depoſed he had been in *London* much longer. *Gavan* acknowledged he knew *Dugdale* at the Lord *Aſton*'s in *Staffordſhire*, and had converſed with him in *Ewer*'s Chamber; but never, he proteſted, upon any Treaſonable Matter; nor was *Dugdale* a credible Witneſs, who had run away with 300 *l.* of his Lord's Money. The Court told him, he muſt not tell a Story out of this or that Lord's Mouth, to aſperſe the Witneſs, unleſs he had Evidence to prove what he charged him with.

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Whitebread then repeated his former Objection, how improbable it was that he ſhould put theſe Words in a Letter, *That he ſhould provide ſtout Men to kill the King*, and ſend it by the common Poſt; or that he ſhould beat one to whom he had committed ſuch Secrets as *Oates* depoſed; and obſerved further, that it was ſtrange there ſhould be a Plot, wherein ſo many Perſons of Honour and Quality were concerned, and ſuch Preparations pretended to be made, and yet no Foot-ſteps of it appear; and concluded with recommending himſelf to God and the Jury.

Fenwicke the Priſoner obſerved, that it was not probable ſo many innocent young Lads ſhould come over to atteſt a Falſhood; and that the Witneſſes on the other Side, were People of a poor beggarly Condition, who expected to advance their Fortunes by this pretended Diſcovery: That it could not be ſuppoſed they ſhould truſt *Gates* with the Sight of ſuch Letters, and ſuch Secrets, as he pretended; being a Perſon they never eſteemed, and had expelled the College. He obſerved further, that none of the Commiſſions or Letters, the Witneſſes mentioned, had appeared; nor was it proved that any Money was paid, or Arms provided, though it was three Quarters of a Year ſince the pretended Diſcovery; and indeed, that there were no Circumſtances to induce the Jury's belief, but *down right Swearing*; concluding that the Priſoners were Perſons of unblameable Lives, never accuſed of any Crime before; whereas the World were ſufficiently acquainted, how ſcandalouſly their Accuſers had lived.

The Directions of the Chief Juſtice to the Jury.

The reſt of the Priſoners having uſed much the ſame Arguments in their Defence, the Chief Juſtice ſummed up the Evidence, and told the Jury, that the Teſtimony of the *St. Omer*'s Witneſſes was of much leſs Weight than that which had been given on the other Side; not only becauſe they were not upon their Oaths, but becauſe the Teſtimony of a Papiſt, was not to be credited, with or without Oath; ſince they were of a Religion that could diſpence with Oaths for the ſake of their Cauſe: The Teſtimony of theſe young Men therefore, who had been ſent over for this Purpoſe, and had been trained up in ſuch Principles, was very much to be ſuſpected: That the Priſoner's Defence conſiſted in catching at a Point of Time; but that was a thing no Man could charge his Memory with; they were not to govern their Judgments by a Miſtake of ſeven or eight Days: And if the ſixteen Witneſſes, that came over from *St. Omer*'s, were not to be believed, neither were the reſt; for the Papiſts never wanted Witneſſes to prove what they pleaſed; they made no Bones of it. He told them alſo, that *Harcourt*'s Letter, written the ſame Night Juſtice *Godfrey* was miſſing, which ſays, *This Night Sir* Edmundbury Godfrey *was diſpatched*, was an undeniable Evidence the Papiſts murdered him; becauſe he was not known to be dead, till the *Thurſday* following, by other People, which muſt turn every Proteſtant Heart againſt them;

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them; for the Plot was in a great Measure proved by that Murder: However, this, he said, was but a Specimen of what the Papists intended, and none knew where it would End: *They had killed but one Man's Person; but in Effigy, the whole Nation. It was but in one Man's Blood their Hands were imbrued; but their Souls were dipped in the Blood of All. They would kill the King, or any body else that stood in the Way of their Religion; a Religion they would bring in by a Conversion of Blood, and a Baptism of Fire.*

They are convicted Jefferies *applauds the Verdict.*

Then the Jury being withdrawn, after a very short Recess, brought in all the Prisoners GUILTY; whereupon Mr. Recorder *Jefferies* said, that the Prisoners had not been wanting to themselves in offering, nor the Court in hearing, what they had to say; but upon a long Evidence, and a full discussing of all Objections, they had been found Guilty; and he thought every honest Man would say they were unexceptionably found so: It was a just Verdict the Jury had given.

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The Sentence not being pronounced till after Mr. Langhorn's *Trial, I defer my Remarks on the Trial of these five Jesuits, till I have gone through his.*

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The Trial of RICHARD LANGHORN, Esq; for *High-Treason*, at the *Old-Baily*, in *London*, *June* the 14th, 1679. 31 *Car.* II.

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Langhorn's *Trial.*

The Indictment.

THE Indictment charges the Prisoner with High-Treason, in compassing the Death of the King; and to that end, sending Letters to procure Aid of the Pope and the *French* King: The Indictment also charges him with receiving several Commissions from *Rome*, constituting Military Officers to command the Forces to be raised in these Kingdoms, for executing the said Treasons, and with receiving other Commissions for constituting Civil Officers, and delivering them out to other Traitors. The Indictment further charges him with aiding and abetting *Ireland*, *Pickering*, and *Grove*, in their traiterous Design of killing the King, and with moving and soliciting the *Benedictine* Monks to pay the Sum of 6000 *l.* to procure a Person to kill the King: And lastly, it charges him with counselling and abetting *Coleman* in his Treason, who had been convicted and executed, for writing Letters to *le Chaise*, the *French* King's Confessor, to procure the *French* King's Aid, in subverting the Government, and Religion established.

General Evidence of a Plot.

The King's Witnesses being called, *Dugdale* and *Prance* gave Evidence of a Plot in general Terms: That the King was to have been murdered, the Protestants massacred, an Army raised, and the established Religion and Government subverted, *&c.*

Oates's *Evidence.*

Oates was more particular, and deposed, that in *April*, 1677, he went into *Spain*, and in *September* following Mr. *Langhorn*'s Sons came thither; the one entering himself a Scholar at the *English* College in *Madrid*, and the other at *Valladolid*, in order to qualify themselves for Popish Orders. That the Deponent, coming to *England*, brought Mr. *Langhorn* Letters from his Sons, and told him, he thought they would enter into the Jesuit's Society; at which Mr. *Langhorn* rejoiced, being himself a great Votary to the Jesuits; but said, he hoped, if they continued in the World as secular Priests, they would suddenly have great Promotions in *England*, for Things would not long continue in the Posture they were: That the Deponent afterwards carried a Letter from Mr. *Langhorn* to the Fathers at *St. Omers*; wherein he said, he had written to Father *le Chaise* about their Concerns, but that Mr. *Coleman* had been so large, it was not necessary to trouble them with longer Epistles. In another Letter Mr. *Langhorn* expresses his great Care for carrying on the Design of the Catholicks; and said, the Parliament began to flag in promoting the Protestant Religion, and now they had a fair Opportunity to begin and give the Blow: That after the Consult in *April* 1678. the Deponent had orders from the Provincial to give *Langhorn* an Account what Resolutions passed at the Consult; and he told him, that Father *Cary* was ordered to go Procurator to *Rome*; and that there was a Resolve signed, that *Pickering* and *Grove* should go on with their Attempt to assassinate the King; and Mr. *Langhorn* lifted up his Hands, and prayed God it might have good Success: That the Deponent saw, in Mr. *Langhorn*'s Study in the *Temple*, a Commission for the Lord *Arundel* of *Wardour*, to be Lord Chancellor of *England*; another to the Lord *Powis*, to be Lord Treasurer; a third to the Lord *Stafford*, to be Pay-Master of the Army; and another for *Langhorn*, to be Judge Advocate; As also Commissions to the Lord *Bellasis* to be General, and to the Lord *Petre* to be Lieutenant-General, and a Commission to *Coleman* to be Secretary of State. These were all granted by an Authority derived from the Pope, and signed *Johannes Paulus de Oliva*, with the Jesuits Mark, being a Cross through the Letters *J HS*. That he saw about fifty more Commissions for inferior Officers, in the Prisoner's Custody: That the Prisoner gave the Deponent some Original Letters from *le Chaise*, and *Anderton* Rector of the College at *Rome*, to carry to the Fathers, which were in Answer to some Letters the Prisoner had sent them; and therein *le Chaise* assured him of his Constancy in assisting the Society to carry on the said Cause; and said, he need not doubt but the *French* King would stand by them. *Oates* also deposed, that the Prisoner *Langhorn* was Solicitor to the Society, and upon his soliciting the *Benedictines* for Money, the Deponent heard they promised six thousand Pounds towards carrying on the Cause. He remembered also, that the Prisoner was disgusted with Sir *George Wakeman*, because he was not contented with 10000 *l.* for poisoning the King; said he was a covetous Man, a narrow soul'd Physician, and

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and that, it being a publick Concern, he might have done it for nothing.

Then the Priſoner demanded, what Time *Oates* went to *St. Omers*, and when he returned to *England*?

Oates anſwered, he went to *St. Omers* about the 10th of *December*, and ſtaid there till he came to *England* in *April* 1678. and that he did not remain in *England* above twenty Days; and that Father *Williams*, Father *Marſh*, the Rector of *Liege*, Sir *John Warner*, Sir *Thomas Preſton*, Mr. *Pool*, and Sir *Robert Bret*, came to *England* with him.

Mr. *Langhorn* demanded, if he came from *Dover* to *London* in the Coach, or Horſe-back?

Oates *confounded.*

Oates anſwered, the Queſtion was ſo ſudden, he could not be poſitive. *Langhorn* demanded, where he lodged in Town? *Oates* anſwered, he lodged at Mr. *Groves*'s three or four Nights, in Town.

Langhorn demanded, when he turned Papiſt?

Oates anſwered, in *February* or *March*, 1676.

The Priſoner asked, if he left his Vicarage before he had turned Papiſt?

Oates anſwered, it was not very long before.

Langhorn demanded, if he became a Jeſuit? The Chief Juſtice ſaid, he muſt not ask him a Queſtion that brought him in Danger: *Langhorn* replied, that *Oates*, in one of his Narratives, ſaid, There came over nine of us, *All Jeſuits*; and demanded of *Oates*, if ever he converſed with him, or ſaw him, after he acquainted him with the Conſult?

Oates anſwered, once or twice after he came to *England* again in *July*: That he uſed to go to the Priſoner's Chamber in the *Temple*, and not to his Houſe; for the Priſoner ſaid his Wife was a Proteſtant, and but *Ambes-ace* turned from a Devil; and therefore he ſhould not come to his Houſe.

Bedloe's *Evidence.*

Then *Bedloe* was ſworn, and depoſed, that Mr. *Coleman* and Mr. *Harcourt* ſent him with Letters to *le Chaiſe* and Father *Stapleton*; and that *Coleman* took the Letters unſealed, and carried the Deponent with him to Mr. *Langhorn*'s Chamber, who regiſtered them in a Book; and then Mr. *Coleman* ſealed them up, and gave them to the Deponent to carry to *le Chaiſe* and *Stapleton*. The Purport of the Letter to *le Chaiſe* was, that they waited only for his Anſwer, how far he had proceeded with the *French* King about ſending the Money; for they only wanted Money; every Thing elſe was ready: The *Engliſh* Catholicks were ſafe, having procured all Places and Offices to be given to Catholicks, or ſuch as they thought would be ſo: That all the Garriſons were already in their Hands, or ready to be put into them: And in the Letter to Father *Stapleton* it was ſaid, they had ſo fair an Opportunity, having a King ſo eaſy to believe what was dictated to him by their Party, and the *French* King at the ſame Time ſo powerful, that if they miſſed this Opportunity, they muſt deſpair of ever having ſuch another to introduce Popery in *England*.

That the Priſoner did not only regiſter theſe Letters, but every Penny of Money that was paid, and all Tranſactions in Relation to this Concern: That the Deponent brought Letters alſo from the Catholicks abroad to the Popiſh Lords here, which were regiſtered by *Langhorn*; the Tenor whereof was, that the Lord *Bellaſis*, and the reſt of the Party, ſhould be in a Readineſs; for they had provided *Iriſh* Troops in *Spain*, to be ſhipped at the *Groyn*, who ſhould land at *Milford Haven*, and join the Lord *Powis* in *Wales*.

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Then *Oates* added to his former Evidence, that the Congregation at *Rome* contributed eight hundred thouſand Crowns to be ſent into *England*; and *Langhorn*, the Priſoner, enquired concerning that Money, and had Knowledge of the Receipt of it in *France*, as he told Father *Kaines* and Father *Fenwicke* in *July* or *Auguſt*.

The Priſoner's Defence.

Mr. *Langhorn* objected to the Teſtimony of the Witneſſes, that they confeſſed themſelves Partakers in the Crime they accuſed him of; but was anſwered, they were good Witneſſes notwithſtanding, though they had not had their Pardons; but they had ſeveral Pardons: To which he replied, that they came under the ſame Reaſon of Law with an Approver; and though the Approver was pardoned, the Appellee ought to be diſcharged by Law; but objected further, that they had received, or expected, Rewards for their Evidence.

Oates *and* Bedloe *brag of their Riches.*

In anſwer to this, *Oates* ſaid, he had diſburſed ſix or ſeven hundred Pounds out of his Pocket, and did not know when he ſhould ſee it again: And *Bedloe* ſaid he was ſo far from gaining by it, that he was ſeven hundred Pounds out of Pocket.

Then the Court interpoſed, and ſaid, it was but reaſonable the Witneſſes ſhould have a Maintenance from the King; and, unleſs they could prove any Thing was given them by Contract, or by Way of Subornation, it could not be made an Objection.

Langhorn *objects, the Witneſſes ſwore for Gain;*

Langhorn anſwered, *Bedloe* had received 500 *l.* for his Evidence; and though it might be reaſonable to offer a Reward, by Proclamation, for the Diſcovery of a Perſon charged with a Crime, when he abſconded; yet he thought it hard, when a Priſoner was in Cuſtody, Witneſſes ſhould be brought in againſt him by ſuch Means.

Anſwered, this was the Wiſdom of the Parliament.

The Court replied, that the offering a Reward for the further Diſcovery of the Plot could be no Objection to the Teſtimony of the Witneſſes; that this was to fly in the Face, and reflect on the Integrity and Wiſdom, of the King, Lords, and Commons, for it was done by the Advice of all three; and demanded, if his whole Defence lay in Objections to the Incompetency of the Witneſſes?

The Priſoner's Hardſhips.

The Priſoner ſaid, his whole Defence muſt lie in diſabling the Witneſſes, for he had been kept cloſe Priſoner in *Newgate*, from the 17th of *October* to that Day ſev'night, and converſed with no Friend or Relation: He had not ſo much as heard what he was charged with, nor could foreſee what theſe Men would teſtify againſt him.

His Witneſſes,

Then the Priſoner called his Witneſſes, and proved that *Oates* did not come from *St. Omers* to *England* in the Company he pretended; and that he was at *St. Omers* all the Time he had ſworn he was in *England*, particularly in the Months of *April* and *May*; which was atteſt-

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ed by near twenty Witneſſes, as well Students of *St. Omers*, (who ſaw him at Dinner in the College almoſt every Day, and converſed with him,) as others.

Further Partiality of the Court.

Then Mr. *Langhorn* deſired, (ſince *Oates* had affirmed he was ſix or ſeven hundred Pounds out of Purſe) he might examine a Witneſs or two, to ſhew he was very poor and indigent before he became an Evidence: But the Court anſwered, This was nothing to the Purpoſe.

The Priſoner then deſired he might read the Copy of a Record in the Houſe of Lords, to ſhew that *Bedloe* ſwore he had no other Perſon to accuſe, either in the Houſe, or out of the Houſe, than thoſe he then charged; and he, the Priſoner, was not one of the Perſons mentioned there.

The Court anſwered, perhaps *Bedloe*'s Memory failed him; he ought not to be concluded by what he ſaid there.

The Priſoner demanded of *Oates*, if he knew that he diſtributed any of the Commiſſions he mentioned?

Oates *owns he ſuppreſſed Part of his Evidence.*

Oates anſwered, the Priſoner ſaid he had diſtributed them; and particularly, that he ſent one, by his Son, to the Lord *Arundel* of *Wardour*, to be Commiſſary-General: And *Oates* ſaid he had other Evidence, but he thought it proper not to mention it now, becauſe it would diſcover his Evidence againſt the Popiſh Lords; deſiring the Court to excuſe him, becauſe he reſerved it for another Trial.

Then the King's Counſel called the ſame Witneſſes, to prove *Oates* was in *London*, at the Time of the Conſult, in *April* and in *May*, 1678, as they had done in the preceding Trials of the Jeſuits, (to which the Reader is referred) and they gave the ſame Teſtimony in this.

Clay's *Evidence.*

And *Clay*, a Prieſt, depoſed, that he met *Oates* at Mr. *Charles Howard*'s in *Arundel-Houſe*, twice in the Year 1678. once in *April*, and another Time in the Beginning of *May:* That he converſed with *Oates*; and Mr. *Howard* told the Deponent, *Oates* had ſome Thoughts of being a Jeſuit.

Then the Priſoner called Mr. *Charles Howard* as an Evidence, who depoſed, that *Oates* was at his Houſe in the Year 1677, and after *July* in the year 1678. but he did not remember he was there in *May:* as *Clay* depoſed.

The Priſoner, proceeding in his Defence, ſaid, as he had proved that *Oates* had falſifyed in one Point of his Teſtimony, namely, as to his being at the Conſult in *April* 1678. and as to the other Perſons he ſwore were there; particularly Sir *Thomas Preſton*, Sir *John Warner*, and Mr. *Poole*, who were proved to be in the *Low Countries* at that Time, he ought not to be believed in the reſt; proteſting that he had not ſeen *Oates* ſince *November* 1677. when he brought him Letters out of *Spain* from his Sons: And deſired the Court would obſerve, that he had but one Week's Time to prepare for his Defence; and was forced to take ſuch Informations as his Friends could pick up to anſwer *Oates*'s Narrative, ſuppoſing he would have given the ſame Evidence here as he had done at former Trials. That it could not be ſuppoſed the young Gentlemen, who came over from *St. Omers*, came with any ill Deſign, or were bribed by Rewards to ſay what they did; for he never ſaw the Faces of any of them till his Trial.

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To which Chief Juſtice *North* replied, they were all Papiſts, and ſpoke in a common Cauſe.

Mr. *Langhorn* ſaid, if they were not to be believed, becauſe they were Papiſts and Friends, neither were the other Witneſſes to be believed, becauſe they were Enemies. And as to *Bedloe*'s Evidence, it was not probable that he, (the Priſoner) in his way of Practice, ſhould become a Clerk to regiſter Letters, and keep the Accounts of a Religious Order; and it was ſtill more improbable that he ſhould admit *Bedloe* to be privy to thoſe Accounts, being one he could not tell whether he had ever ſeen before. If he could have gueſſed what *Bedloe* would have charged him with, he might have been better prepared for his Defence: For his Part, he made uſe of ſuch Witneſſes as his Friends brought; he never ſaw them before they appeared in Court; while the other Side had Time to prepare and get their Witneſſes together; and he hoped he ſhould lie under no Diſadvantage on Account of Religion, for that would look as if they condemned him purely for his Religion. He ſaid, he abſolutely diſclaimed all Principles of Diſloyalty, and believed it was Damnation to any one that went about to kill the King, and concluded with recommending his Cauſe to the Court and the Jury.

The Directions of the Lord Chief Juſtice to the Jury.

The Lord Chief Juſtice, in ſumming up the Evidence, obſerved that the Priſoners Witneſſes came over to ſave their Brethren the Papiſts, who were about to be hanged for the Plot; they were ſent over for that Purpoſe, and then ſpeaking to no other Time, but the Months of *April* and *May*, 1678. would incline Men to believe it. He obſerved further, that the Lawfulneſs of depoſing and killing Kings of a different Religion, was a Doctrine they avowed in Print, and that they taught and practiſed all ſorts of Lying and Equivocation, as lawful to propagate their Faith; and it was not improbable that theſe *St. Omers* Boys, bred up in their Colleges, had theſe Principles inſtilled into them; that their Diſpenſations, Pardons, and Indulgencies for Breach of Vows, were ſtill worſe, and rendered them unfit for human Society, or to have any Faith or Credit given to their Teſtimony; although it might be fair to hear what they ſaid: And that there was not only this in it, but *Oates* had juſtified his being in *London*, by ſeven or eight Witneſſes, who expreſly contradicted the others Teſtimony; and though there were ſome Witneſſes, who depoſed, that Sir *Thomas Preſton*, and Sir *John Warner*, were on the other Side the Water, who were not contradicted by any other Witneſſes, yet if the reſt were not to be believed as to *Oates*'s being there, neither were theſe: Indeed, there ſtood a Gentleman at the Bar for his Life; but if Mr. *Oates* ſaid true, Their Lives, their Liberties, their King, their Religion, and all were at Stake: They knew the cruel Principles of the Papiſts by Experience, and could not be blamed for taking

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taking care of themſelves. The Plot was proved as clear as the Day, by *Oates* and his Teſtimony; was confirmed by that which could never be anſwered, *viz.* The Letter found among Mr. *Harcourt*'s Papers, who was one of the Conſpirators, giving an Account that the Conſult was to be held the 24th of *April*, 1678. as Mr. *Oates* had depoſed; and they did not read that Letter as an Evidence againſt Mr. *Langhorn* in particular, but as a Proof of the Plot in general.

The Priſoner begged leave to obſerve that *Oates* might eaſily know of this Congregation, there being ſeveral other Letters of Summons ſent over to the Fathers at *St. Omers*, for the holding that Congregation, which was like the Meeting of a Dean and Chapter; and there was Reaſon for requiring Secreſy, the Fathers being in great Danger if they were taken, on account of their Popiſh Orders.

The Chief Juſtice anſwered, there was no Occaſion for extraordinary Caution, the Papiſts being uſed with great Indulgence at that Time; and having concluded his Charge, went off the Bench with the reſt of the Judges, leaving Mr. Recorder *Jeffries* to take the Verdict, and the Jury withdrawing, after a very ſhort Receſs, brought the Priſoner in GUILTY: Whereupon the Recorder ſaid, it was a Verdict according to the Juſtice of the Evidence.

Langhorn *convicted.*

Sentence paſſed on the five Jeſuits, and Mr. Langhorn.

Then Mr. *Whitebread*, and the other four Jeſuits tried the Day before, were ſet to the Bar, together with Mr. *Langhorn*, and the Recorder made a Speech to them; wherein having expatiated on the Heinouſneſs of the Priſoners Crimes, and the bloody Principles on which their Religion was founded, he ſaid he was much concerned for Mr. *Langhorn*, who was arrived to great Eminence in his Profeſſion; but that he too had not only treſpaſſed againſt all the Rules of Chriſtianity, but againſt the Rules of his Profeſſion, and could not be ignorant what an Offence it was to attempt any Injury againſt the Perſon of the King, or to endeavour to introduce a foreign Power. He ſaid, their Crimes had been ſo fully proved, that no Perſon there could have any Doubt of their Guilt, and that there was not the leaſt Reaſon to ſuſpect the Credibility of the Witneſſes produced againſt them: They had been fully heard, and ſtood fairly convicted of the Crimes they were accuſed; and having again inveighed againſt their Principles, bid them conſider the Tribunal, whither they were going; concluding with abundance of pious Exhortations: After which he pronounced the uſual Sentence in Caſes of High-Treaſon.

White-bread's *Speech at* Tyburn.

The five Jeſuits being drawn on Sledges from *Newgate* to *Tyburn*, on *Friday* the 20th of *June*, obtained leave to ſpeak to the People: Whereupon *Thomas Whitebread*, their Provincial, ſaid, I am now going to make my Appearance before the Face of Almighty God, and receive a final Judgment for all my Thoughts, Words, and Actions, and cannot be ſuppoſed to ſpeak any thing but Truth; therefore in his moſt holy Preſence, and as I hope for Mercy from his divine Majeſty, I do declare, that I go out of the World as innocent, and free from any Guilt of theſe Things laid to my Charge, as I came into the World from my Mother's Womb: And I do from my Heart, renounce all manner of Pardons, Abſolutions, Diſpenſations for Swearing, as Occaſions or Intereſt may ſeem to require, which ſome have been pleaſed to lay to our Charge as Matter of our Practice and Doctrine, but is a Thing ſo unjuſtifiable and unlawful, that I believe, and ever did, that no power on Earth can authorize me, or any body, ſo to do. I heartily forgive thoſe that falſly accuſed me: Time will make it appear, they have wronged me, and their own Souls a great deal more: I pray God bleſs his Majeſty, both temporally and eternally, which has been my daily Prayer for him, and is all the Harm I ever intended, or imagined againſt him: And I do with this my laſt Breath, in the Preſence of God, declare, that I never did learn, teach, or believe; nor can, as a Catholick, believe, that it is lawful, upon any Occaſion or Pretence whatſoever, to deſign or contrive the Death of his Majeſty, or any Hurt to his Perſon; but on the contrary, all are bound to obey, defend, and preſerve his ſacred Perſon to the utmoſt of their Power. And I do moreover declare, that this is the true and plain Senſe of my Soul, in the Sight of him who knows the Secrets of my Heart, and as I hope to ſee his bleſſed Face, without any Equivocation, or mental Reſervation. What remains for me now to do, is, to recommend my Soul into the Hands of my bleſſed Redeemer, by whoſe only Merits and Paſſion I hope for Salvation.

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Harcourt's *Speech.*

William Harcourt made a Speech of the like Tenor, proteſting he was innocent both of the Plot, and *Godfrey*'s Death; and declared he did not write that Letter concerning the Diſpatch of *Godfrey*, as *Dugdale* had depoſed.

Turner's *Speech.*

Anthony Turner declared, he was never preſent at any Conſult or Meeting, where any Propoſal was offered, or Reſolve made, for taking away the King's Life; and if he had known of any Plot, he ſhould have thought himſelf obliged in Conſcience to diſcover it: Proteſted he was never once at *Tixall*, the Lord *Aſton*'s Houſe, in the Year 1678, though the Witneſs had ſworn he was laſt *September* at a treaſonable Conſult of the Jeſuits there, in Mr. *Ewers*'s Chamber. He acknowledged he was at the Congregation of the Jeſuits on the 24th of *April*, 1678, but, in that Meeting, as he hoped for Salvation, proteſted they meddled not with State-Affairs, but only treated about the Concerns of their Province, as they uſually did every third Year all the World over, without Offence to Temporal Princes.

The Sheriff told him, he obſerved they only juſtified themſelves, but the People would not believe a Word they ſaid; and therefore bid him ſpend his Time in Prayer, and he ſhould not think the Time too long.

Then *Turner* made further Proteſtations of his Innocence, and ſaid, As for thoſe Catholicks I have converſed with ſince the Noiſe of the Plot, *I proteſt before God, in the Words of a dying Man, I never heard any one of them, either Prieſt or Layman, expreſs the leaſt Knowledge of a Plot againſt the King, for the advancing the Catholick Religion:* Then he prayed for the King, and declared, he forgave all thoſe that had falſly accuſed him.

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Gavan's *Speech.*

John Gavan alſo made a Speech, and ſaid, I am come now to the laſt Scene of Mortality, to the Hour of my Death; an Hour which is the Horrizon between Time and Eternity; an Hour which muſt either make me a Star to ſhine for ever in the Empire above, or a Firebrand to burn everlaſtingly among the damned Souls in Hell below; an Hour in which, if I deal ſincerely, and with a hearty Sorrow acknowledge my Crimes, I may hope for Mercy; but if I falſly deny them, I muſt expect nothing but eternal Damnation; and therefore what I ſpeak in this great Hour, I hope you will believe. And now, in this Hour, I do ſolemnly ſwear, proteſt and vow, by all that is ſacred in Heaven and Earth, and as I hope to ſee the Face of God in Glory, that I am as innocent as the Child unborn, of thoſe treaſonable Crimes which Mr. *Oates* and Mr. *Dugdale* have ſworn againſt me at my Trial; nor do I make uſe of any Equivocation, or mental Reſervation, to palliate the Truth: Neither do I make uſe of any Diſpenſation, from the Pope, or any Body elſe; or of any Oath of Secrecy, or any Abſolution in Confeſſion or out of Confeſſion, to deny the Truth; but I ſpeak in the plain Senſe which the Words bear; and if I do ſpeak in any other Senſe, to palliate or hide the Truth, I wiſh with all my Soul, that God may exclude me from his heavenly Glory, and condemn me to the loweſt Place of Hell-Fire.

And I think it my Duty to proteſt to you, with my laſt dying Words, that neither I in particular, nor the Jeſuits in general, hold *the King-killing Doctrine*, or any ſuch Opinion; but utterly abhor and deteſt it. *Mariana*, the *Spaniſh* Jeſuit, is the only one I know of, that holds this Opinion, and he does not defend it abſolutely, but only problematically; for which his Book was called in and that Opinion expunged and cenſured. I refer you to that Royal Author *Henry* the Fourth of *France*, who, in a publick Oration he pronounced in Defence of the Jeſuits, declared, that he was very well ſatisfied with the Jeſuits Doctrine, concerning Kings; and indeed the whole Catholick World is the Jeſuits Advocate. Do not *Germany*, *France*, *Italy*, *Spain*, and *Flanders*, truſt the Education of their Youth to them, and truſt their own Souls to be governed by them in the Adminiſtration of the Sacraments? and can it be imagined ſo many great Kings and Princes ſhould do, or permit this to be done in their Kingdoms, if the Jeſuits were Men of ſuch damnable Principles as they are now taken to be in *England?*

As to Mr. *Oates* and Mr. *Dugdale*, I call God to Witneſs, that they by falſe Oaths have brought me to this untimely End: I heartly forgive them, and pray God to grant them Repentance. I have nothing elſe to do more, my great God, but to caſt myſelf into the Arms of your Mercy. I believe you are One divine Eſſence, and Three divine Perſons: I believe the Second Perſon of the Trinity became Man to redeem me; and I believe you are an eternal Rewarder of the Good, and an eternal Chaſtiſer of the Bad: In fine, I believe all you have revealed for your own infinite Veracity: I hope in you above all Things, for your infinite Fidelity; and I love you above all things for your infinite Beauty and Goodneſs; and I am heartily ſorry that ever I offended ſo great a God. I am contented to undergo an ignominious Death for the Love of you, my dear Jeſu, ſeeing you have been pleaſed to undergo an ignominious Death for the Love of me. 1679. 29 Car. II.

John Fenwicke, made the like ſolemn Proteſtations of his Innocence, both as to the Plot and *Godfrey*'s Murder, the reſt had done: Whereupon *How* the Sheriff told him, he believed he had a Hand in *Godfrey*'s Murder; *Fenwicke* anſwered, Now I am a dying Man, do you think I would damn my Soul? To which the Sheriff replied, I wiſh you all the Good I can; but I'll aſſure you, I believe never a Word you ſay. Fenwicke's *Speech.*

Then *Fenwicke* went on and ſaid, In the Words of a dying Man, and as I hope for Mercy at the Hands of God, before whom I muſt ſhortly appear, and give an Account of all my Actions, I do again declare, that what I have ſaid is true; and I hope Chriſtian Charity will not let you think, that by the laſt Act of my Life I would caſt away my Soul, by ſealing up my laſt Breath with a damnable Lye.

After which, having performed their private Devotions, in which they met with ſome Interruption from Sheriff *How*, the Cart was drawn away, and they were all hanged together till they were dead, and then cut down and quartered. Three Jeſuits executed.

Mr. *Langhorn* having been reprieved from Time to Time, either to give him an Opportunity of ſettling his Affairs with his Clients, or in hopes of making an Evidence of him, was at length drawn on a Sledge from *Newgate* to *Tyburn*, on the 14th of *July*; where he made no Speech before his Execution, but left a Paper with the Sheriff, of the following Tenor, *(viz.)* Mr. Langhorn's Paper delivered to the Sheriff.

1. That he acknowledged King *Charles* II. to be his lawful Sovereign.

2. That he did, in his Soul, believe, that neither the Pope, nor any Prince, Potentate, or foreign Authority, nor the People of *England*, or any Authority, out of this Kingdom or within the ſame, have any Right to diſpoſſeſs his Majeſty of the Crown, or depoſe him for any Cauſe, or pretended Cauſe, whatſoever; or to licenſe any Subject to bear Arms againſt his Majeſty, or take away his Life, or do him any bodily Harm: or to diſturb the Government, as eſtabliſhed by Law, or to alter the ſaid Government or Religion eſtabliſhed, by Force.

3. That he never was guilty, in his moſt ſecret Thoughts, of any Treaſon, or Miſpriſion of Treaſon.

4. That he never ſaid to *Oates*, or any other Perſon, that if his Sons continued in the World as ſecular Prieſts, they would ſuddenly have great Promotions in *England*, for Things would not continue long in the Poſture they were; or any thing to that Effect.

5. That he never wrote any Letter or Paper to, or received any Letter or Paper from, *la Chaiſe*, or any other *French* Jeſuit or

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or from Father *Anderton*, Cardinal *Barbarino*, or any other Cardinal; nor did he ever ſee any Letter or Paper purporting to be written to the ſaid *la Chaiſe*, *Anderton*, or Cardinal *Barbarino*, unleſs the printed Letters in Mr. *Coleman*'s Trial, which he never ſaw any where but in the printed Narrative of that Trial; nor did he ever hear any mention made of the Name of *la Chaiſe*, before he read the ſaid printed Narrative.

6. That he never wrote, or entered in any Book, any Letters, or Copies of Letters, written by the ſaid *Coleman* to any Perſon whatever.

7. That he never entered or regiſtred in any Book or Paper, or cauſed to be entered or regiſtered, any Act, Conſult, Determination, Order, or Reſolve, paſſed, decreed, or agitated in any Congregation, Conſult, Chapter, or Aſſembly of the Society or Order of Jeſuits, or of any other Religious Order; nor was any ſuch ever communicated to him.

8. That he never ſaw *Bedloe*, who gave Evidence againſt him, till he ſaw him at his Trial, to his Knowledge.

9. That after the Month of *November* 1677. he never ſaw or ſpoke with *Titus Oates*, the other Witneſs, till he ſaw him at his Trial.

10. That he never ſaw any Commiſſion, Patent, or Grant, to his Knowledge, under or pretended to be under, the Hand or Seal of *Johannes Paulus de Oliva*, or any other General of the Jeſuits, unleſs the Paper or Inſtrument produced and ſhewn him at his Trial; which, whether it was ſigned or ſealed by the ſaid *de Oliva*, he did not know.

11. That he never wrote, or procured to be written, any treaſonable Letter or Paper, in any Book or Paper whatever.

12. That he believed, if he had known of any treaſonable Deſign againſt the King, or to alter the Government of Religion eſtabliſhed, and ſhould have concealed it, it would have been a Sin unto Death, and deſerved eternal Damnation.

13. That he believed, it was not lawful to lie, or ſpeak any Untruth, or to commit any Sin that Good may come of it; and that it was not in the Power of any Prieſt, or Pope, or of God himſelf, to give him a Licence to lie or ſpeak any Untruth; for Almighty God, who was perfect Truth, could not give any one a Licence to commit a Sin againſt his own Eſſence.

And he ſolemnly declared, in the Preſence of God, that he made this Declaration and Proteſtations in the plain and ordinary Senſe of the Words, as they are commonly underſtood by *Engliſh* Proteſtants, and the Courts of Juſtice, without any Evaſion, Equivocation, Deluſion, or mental Reſervation whatſoever; and without any Diſpenſation, or Pardon, or Abſolution already granted by the Pope, or any other Authority whatſoever; and without the Hope, Expectation, or Deſire, of any ſuch Diſpenſation; and without thinking he could be acquitted before God or Man, or abſolved of this Declaration. And he left it to the Judgment of all good Men, Whether they would believe that he had thus ſolemnly affirmed and ſworn in his preſent Circumſtances, or what had been ſworn by his Accuſers: And having declared he died a *Roman* Catholick, he ſaid, he believed his Religion was the ſole Cauſe that moved his Accuſers to charge him with Treaſon, and the only Ground that could give them any Hope to be believed; or which could move the Jury to believe the Evidence of ſuch Men.

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That he had not only a Pardon offered him, but alſo great Preferment and Eſtates, ſince he was condemned, if he would have forſaken his Religion, and owned himſelf guilty of the Crime charged upon him, AND WOULD HAVE CHARGED THE SAME CRIMES UPON OTHERS; but he bleſſed God, who had preſerved him from yeilding to thoſe Temptations, and ſtrengthned him, rather to chuſe this Death than ſtain his Soul with Sin, and charge others, againſt Truth, with Crimes, of which he did not know that any Perſon was guilty.

Then he prayed for the King, and that his Majeſty might never fall into ſuch Hands as his Royal Father fell into. He prayed alſo for *Oates* and *Bedloe*, and all that had been acceſſary to the ſhedding his innocent Blood, or preventing the King's Mercy being extended to him; for all thoſe that rejoiced at his Execution; and for all thoſe who ſhould be ſo unchriſtianly uncharitable as to disbelieve, and refuſe to give Credit to the Proteſtations he then made. He prayed that God would not lay his Blood to the Charge of the Nation; and laſtly prayed for thoſe that had ſhewn any Charity for him.

Mr. *Langhorn* having delivered this Paper to the Sheriff, and performed his Devotions, the Executioner did his Office. *Mr. Langhorn executed.*

The Objection made by *Whitebread* and *Fenwicke*, *That they had already been tried for the ſame Facts, the Jury charged with them, and the Evidence given againſt them, and then the Jury diſmiſſed without giving a Verdict*, was certainly an Objection of great Weight: For every Priſoner, with whom a Jury is charged in Capital Caſes, ought either to be convicted, or acquitted at that Time; * or elſe inſtead of one Trial, a Man may be made to undergo twenty Trials for the ſame Facts, when the Court find the Evidence againſt him defective. But this was not all; *Oates* and *Bedloe* both confeſſed, they took the Liberty to contract and enlarge their Evidence as they ſaw fit, and conſequently were both perjured, being ſworn to ſpeak the whole Truth at every Trial, as the Priſoners themſelves obſerved; and they appear to have been rather encouraged than reprehended by the Court for this infamous Practice. We have an Intention (ſay both *Oates* and *Bedloe*) to reſerve our Evidence for the Deſtruction of greater Men, who might have been prepared to defend themſelves, if we had diſcovered what we intended to ſwear againſt them at the former Trial, and therefore we thought fit to conceal Part of our Evidence: We thought it of more Conſequence, ſays *Bedloe*, to diſpatch the Lords in the *Tower*, than take away the Life of an old Prieſt or two; for neither *Oates* or *Bedloe* imagined that theſe Prieſts

Remarks on the Trials of the five Jeſuits and Langhorn.

* *Trials per pais* 202. 2 Hawk. 439.

1679. 31 Car. II. Prieſts could ever have been tried again, and brought a ſecond Time in danger of their Lives, for the very Facts they had been tried for before. And indeed I do not remember one Inſtance of the like Nature in all the Volumes of State Trials; though Chief Juſtice *North* was pleaſed to ſay, it was often done, and all the Judges declared it to be Law. The Opinions of Judges too often vary with the Times, and that which was Law one Day is not ſo another.

How did the King's Counſel, and the whole Bench of Judges, endeavour to enflame and prejudice the Jury againſt the Priſoners! It is often ſaid, indeed, that the Judges ought not only to be impartial, but to be Counſel for the Priſoners; and inſtead of interpreting and wreſting the Laws or the Evidence to their Deſtruction, as is but too common, they ought to take Care that they do not ſuffer in their Defence, by their own Ignorance or Inadvertency: But here the whole Court labour-ed, with all their Skill and Influence, to get the Priſoners convicted. They were prepoſſeſſed, and prejudiced themſelves with an Opinion of the Truth of the Plot, and ſeem-ed to think the Law ought to be ſtretched, and every reaſonable Maxim over-ruled, that tended to acquit and bring off the Priſoners.

They told the Jury, that the Teſtimony of a Papiſt was not to be believed, with or without Oath: But, were we to turn the Tables, and ſuppoſe a Proteſtant tried in a Popiſh Country, and the Judges declared, no Proteſtant was to be believed, ſhould we not have thought ſuch a Speech highly injurious? and, as the Priſoners obſerved, if we will admit no Evidence but that of Proteſtants, we muſt break off all Commerce and Intercourſe with Popiſh Countries, and our People muſt expect to be uſed there as we uſe the Papiſts here. But what is ſtill more ſhocking is, that the Chief Juſtice ſhould obſerve, that the Priſoners Defence conſiſted only in catching at a Point of Time, and direct the Jury not to govern their Judgments by a Miſtake of ſeven or eight Days; for what Defence could be more proper, when they were charged with being at treaſonable Conſults, than to ſhew they were at very diſtant Places at the Times the Witneſſes ſwore to?

We find alſo, that the Court would not ſuffer the Priſoners to ſhew the Witneſſes contradicted themſelves, and ſwore, at This, contrary to the Evidence they gave at former Trials, which was ſurely a Hardſhip: But the greateſt Hardſhip, as Mr. *Langhorn* obſerves, was, that Witneſſes ſhould be hired, by ſuch extravagant Rewards, to deſtroy them.

Let a Man be never ſo innocent a Reward of 500*l.* and ſo many Honours and Privileges as theſe Witneſſes procured to themſelves, by their Perjuries, muſt raiſe up a Multitude of raſcally Knights of the Poſt, to ſwear whatever is dictated by their crafty Principals; eſpecially where downright Swearing is thought ſufficient, without one probable Circumſtance to ſupport their Teſtimony. It was to no Purpoſe to object to the Characters of the Witneſſes, that they were Men of infamous Lives that made a Trade of Swearing; that they did not only confeſs themſelves guilty of the Crimes they accuſed the Priſoners of, but many more: That all of them acknowledged themſelves perjured, and *Oates*, that he had turned Papiſt and Jeſuit, received Sacraments, and entered into the moſt ſolemn Oaths and Engagements, on Purpoſe to betray thoſe that relieved his Neceſſities. That *Dugdale* had cheated his Lord; and that *Bedloe* acknowledged, he had twice provided Fewel to ſet Fire to the City of *London*; but theſe Men's Teſtimony was preferred to that of Numbers of Papiſts of the beſt Quality and Characters, and againſt Men who had never been accuſed of any thing Criminal before this pretended Plot. The Chief Juſtice *Scroggs*, the Recorder *Jeffries*, and moſt of the Judges, lived to be convinced of their Error, and repent their forward Zeal, and even ſuffered by the like popular Clamours. *Oates* had the Impudence, a very little afterwards, to prefer Articles, to the King and Council, againſt the Chief Juſtice himſelf, as a Criminal and Favourer of the Plot. In the next Reign we find *Oates* convicted of Perjury in theſe Trials, upon two Indictments, by above forty Witneſſes, of which ſeveral were Proteſtants of Quality. *Prance*, another of the Witneſſes, retracted his Evidence, and declared, he was tortured into a Compliance with the Faction, and compelled to be an Evidence to ſave his Life. Another of the Witneſſes, that ſwore he dined with *Oates* at *Iſlington*, alſo retracted his Evidence; inſomuch, that there is ſcarce a Man in *England* at this Day, except the Fanaticks, who were the real Forgers of the Plot, and look upon themſelves as bound in Honour to ſupport the Credit of it, but believes the whole Charge to be a Sham; and that the principal Deſign of the Faction, in trumping up this Plot, was the ſame as that of their Fore-fathers, who by their Clamours againſt Popery, led the Way to the Ruin both of Church and State.

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It is but too evident, from dear-bought, repeated Experience, that whenever the Sectaries and Republicans clamour loudeſt againſt *Popery* and Arbitrary Power, their Views are to deſtroy the Conſtitution, and ſubvert both the Civil and Eccleſiaſtical Eſtabliſhment; for within the Term Popery they ever comprehended Epiſcopacy, when they dare ſpeak out; and by Tyranny we are to underſtand Monarchy, however gentle and limited by the moſt equitable Laws.

The

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Trials of Wakeman, &c.

The Trial of Sir GEORGE WAKEMAN, Bart. and of WILLIAM MARSHALL, WILLIAM RUMLEY, and JAMES CORKER, *Benedictine* Monks, at the *Old-Baily*, for *High-Treaſon*, 18 *July* 1679. 31 *Car.* II.

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The Indictment of the firſt three.

SIR *George Wakeman*, *Marſhal* and *Rumley* were indicted for *High Treaſon*, in compaſſing the Death of the King, and the Subverſion of the Government and Religion eſtabliſhed, and for holding a Conſultation for that End the 30th of *Auguſt* 1678. And Sir *George Wakeman* is further charged with accepting a Commiſſion, derived from the Authority of the See of *Rome*, to be Phyſician-General to the Popiſh Army, intended to be raiſed; and the ſaid *William Marſhal* and *William Rumley* are charged with paying the Sum of 6000 *l.* towards the effecting and conſummating the ſaid Treaſon.

The Indictment of Corker.

James Corker was indicted for *High Treaſon* ſeparately, for being at the treaſonable Conſult, at the *White Horſe*, on the 24th of *April*, 1678. and hiring Aſſaſſins to kill the King, and for being an Accomplice with the five Jeſuits, in the reſt of their Treaſons, ſet forth in the Indictment of the ſaid five Jeſuits.

Sir Robert Sawyer's *tragical Speech.*

Sir *Robert Sawyer*, in opening the Evidence againſt the Priſoners, ſaid, they ſtood indicted as principal Actors in the late *moſt Catholick and bloody Plot:* That the Church and State ſeemed to them too trifling a Sacrifice to be offered up to the univerſal Supremacy of *Rome:* They had determined alſo to cut off the King, and reſolved on ſeveral Methods, to perpetrate the horrid Parricide: Some had contrived to ſhoot him, *viz. Grove* and *Pickering*, and theſe had been brought to condign Puniſhment; others were incited to ſtab him, and theſe had been brought to Juſtice too; and now a third Sort were to be tried, for endeavouring to take him off by Poiſon. Sir *George Wakeman*, whoſe Experience and Dependance on the Court gave him great Opportunities, was pitched upon as the propereſt Inſtrument to effect it; and though his Religion might be ſome Inducement to him to commit the Fact, yet was he hired with a Reward of fifteen thouſand Pounds, to undertake the great Employment; of which he had received Part in Hand.

The other Priſoners at the Bar, he ſaid, had been privy to the great Conſult for murdering the King; and though the Jeſuits were the principal Engineers, yet all the other Orders had agreed to contribute to it: The *Benedictines* in particular, were to furniſh the Sum of ſix thouſand Pounds; concluding that there was no manner of Credit to be given to the ſolemn Aſſeverations of the Conſpirators, who had been executed, and denied their Knowledge of the Plot with their laſt Breath.

The King's Witneſſes.

The King's Witneſſes being called, *Dugdale* firſt gave a general Account of the Plot, as was practiſed in the former Trials, *viz.* that the King was to be murdered, the Proteſtants maſſacred, the City fired, and an Army raiſed to ſubvert the Conſtitution and the Proteſtant Religion.

Prance alſo gave a general Account of the Plot; and *Jenniſon* was produced to prove *Ireland* (who was executed) was in *London* when *Oates* ſwore he was there; from whence it was inferred, that there was no Credit to be given to *Ireland*'s Aſſeverations at his Death, or to the Witneſſes that had ſworn the contrary.

Oates's Evidence againſt Wakeman.

Then *Oates* was called as a Witneſs to prove that Sir *George Wakeman* undertook to poiſon the King, and depoſed, that in *July* 1678, *Aſhby* the Jeſuit came ſick to *London*, and Sir *George Wakeman* wrote him a Letter, containing Inſtructions how he ſhould order himſelf at the *Bath*, and in the ſame Letter, informed *Aſhby* that the Queen would aſſiſt him (Sir *George*) in poiſoning the King: That two or three Days after, the Deponent ſaw Sir *George Wakeman* and *Aſhby* together, and they talked of a Commiſſion to make Sir *George* Phyſician-General of the Army: That the Fathers *Harcourt*, *Fenwicke*, and ſome others, were afterwards ſummoned to attend the Queen at *Somerſet-Houſe*; and the Deponent *(Oates)* attended on them thither, and waited in the Anti-Chamber, while the Fathers went in to the Queen; and he heard a Woman's Voice, ſaying, *She would aſſiſt them, in propagating the Catholick Religion with her Eſtate, and that ſhe would endure theſe Violations of her Bed no longer; ſhe would aſſiſt Sir* George Wakeman *in poiſoning the King.*

That when the Fathers came out, he *(Oates)* deſired to ſee the Queen, and had a gracious Smile from her; and while he was in her Preſence, ſhe asked Father *Harcourt* if he had received the laſt 1000 *l.* in the ſame Voice he heard without; and there was no other Woman in the Room with the Queen.

That in the ſome Month of *July*, *Aſhby* propoſed the giving 10,000 *l.* to Sir *George Wakeman*, to poiſon the King, in the Preſence of *Fenwicke* and *Harcourt*; and Sir *George* ſaid, it was too little; and a Letter being ſent immediately to the Provincial *Whitebread*, to inform him that Sir *George Wakeman* had refuſed 10,000 *l.* *Whitebread* ordered the Fathers in *London* to propoſe 5000 *l.* more; and it was accepted, and 5000 *l.* paid in Part; Sir *George Wakeman*'s Name being ſubſcribed to the Receipt in a Book, which was kept by the Fathers at *Wild-Houſe* ſometimes, and ſometimes by Mr. *Langhorn*: That the Tenor of the Receipt was, *Memorandum ſuch a Day* 15000 *l.* *was propoſed to Sir* George Wakeman, *which he accepted*; and underneath, *Received in Part of this* 15000 *l.* 5000 *l.* *of* Harcourt, *by Order of* Edward Coleman.

GEORGE WAKEMAN.

He further depoſed, that the Receipt was dated between the Beginning and Middle of *Auguſt*, 1678, and that he ſaw Sir *George's* Com-

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Commiſſion to be Phyſician-General of the Army, in Sir *George's* Hands.

The Court demanding, if the Witneſs ever ſaw Sir *George* write in his Life, he anſwered, he ſaw him in a writing Poſture, with a Note before him; and when Sir *George* laid down the Pen and went away, he looked on the Note, and the Ink was not dry: That this was the ſame Hand the Letter to *Aſhby*, and the Receipt for the Money, were written in.

Sir *George* demanded of *Oates*, if he had not ſaid poſitively, he did not know the Hand?

Oates anſwered, he did not remember he had ſaid ſo: Sir *George* demanded, if he had not ſaid before the King and Council, that he never ſaw him, and did not know him?

Oates ſaid, having been up two Nights, and very much fatigued and indiſpoſed, he might not charge him home then; but now he had a proper Light, and could ſee his Face, he knew him to be the ſame Man; for he had ſeen him at *Aſhby*'s Chamber two ſeveral Days, and once was when the 10,000 *l.* was propoſed to him.

Sir *George* demanded of *Oates*, what Day that Propoſal was made to him? He anſwered, it was made by *Aſhby*, in *July*, before he went to the *Bath*, in the Preſence of *Harcourt*, *Ireland*, and *Fenwicke*; whereupon Sir *George* obſerved, he would be ſure to name Perſons that could be no Witneſſes, and demanded why, if he knew theſe Things when he was before the Council, he ſaid he knew nothing of him, but concerning a Letter written from *Aſhby* to *Fenwicke*.

Oates's *Evidence againſt* Corker.

Oates did not think fit to anſwer the Queſtion at this Time, but proceeded in his Evidence againſt *Corker*, and depoſed, that he had a Patent from the See of *Rome*, to be Biſhop of *London*, and conſented to the Propoſal made by his Brethren, the *Benedictine* Monks, to contribute 6000 *l.* towards carrying on the Deſign, and wrote a Letter from *Lamſpring* in *Germany*, in *Auguſt* laſt, that he conſented to it; for he was Preſident of the *Benedictines*, and therefore his Suffrage was neceſſary.

That *Corker* alſo was privy to the Conſult and excepted againſt *Pickering*'s being concerned in the Aſſaſſination, becauſe he was an Eccleſiaſtick: It was more proper to employ a Layman, he ſaid, than one that attended at the Altar.

Againſt Marſhal.

As to *Marſhal*, he depoſed, that he agreed to the contributing 6000 *l.* and ſaid, (as *Corker* had done) that it was better to employ a Layman in the Aſſaſſination, than a Religious.

Againſt Rumley.

And as to *Rumley*, that he alſo was privy to the Contribution of 6000 *l.* and prayed for the Succeſs of the Deſign.

Corker demanded, if he accepted the Patent to be Biſhop of *London?* To which *Oates* anſwered, he ſaw it in *Corker*'s Hands; and he ſaid, he hoped it would not be long before he exerciſed his Epiſcopal Function.

Marſhal's *Defence.*

Marſhal asked *Oates*, how long he had known him?

Oates anſwered, two Years, and had ſeen him officiate at the Altar, but never converſed with him. *Marſhal* then deſired to know what Day the Conſult was held; *Oates* anſwered, between the Beginning and the Middle of *Auguſt*; and it was a great Favour he told him the Month: To which *Marſhal* replied, it was impoſſible to make a Defence, if Circumſtances of Time and Place were not mentioned. Then *Oates* ſaid, it was held at the *Benedictine* Convent, either the Day before, or the Day after the Feaſt of the Aſſumption; whereupon *Marſhal* obſerved, he had now ſworn it poſitively: *Oates* ſtill ſaid, he would not be poſitive; and the Chief Juſtice ſaid, the Witneſſes were not to be ſnapped up thus: Then *Oates* ſaid, he verily believed it was the Day before, or the Day after. *Marſhal* demanded, if this would be Evidence againſt a Murderer or a Highwayman, unleſs the Day were fixed exactly?

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Oates then depoſed further, that *Marſhal* was at another Conſult in the *Benedictine* Convent the 21ſt of *Auguſt*, about the *Iriſh* Affairs, and deſired Commiſſions might be ſent to *Ireland* for Officers in the Army that was to be raiſed there, and agreed to the Poiſoning the Duke of *Ormonde*. Then *Oates* deſired he might withdraw, becauſe he was not well; but the Chief Juſtice told him he muſt ſtay till their Defence was over; but he ſhould have any Refreſhments brought him.

Oates chaſed with the Queſtions that were asked him.

Bedloe's Evidence againſt Wakeman.

Bedloe being ſworn, depoſed, that he was at Mr. *Harcourt*'s Chamber (as he thought) about the Beginning of *Auguſt*, 1678, when Sir *George Wakeman* came in, and taking a Turn about the Room, ſaid, for what am I drilled on thus, in a Concern of this Importance? Is this a Buſineſs to be ſlighted? I have no Performance of your Promiſes. *Harcourt* anſwered, why, what would you have? We are ready for you: And Sir *George* replied, then I am ready for you; and *Harcourt* taking a little Note out of his Cabinet, gave it to Sir *George*, and ſaid, there is a Bill for you; I have been to Day at *Whitehall*, and received it by the Queen's Order, from ſuch a Gentleman, and it is upon ſuch a Man for 2000 *l.* Whereupon Sir *George* ſaid, tis well Somebody gives me Encouragement; I have more Encouragement from my good Lady and Miſtreſs, than from any of you: Nay, ſays *Harcourt*, for Encouragement, that you ſhall not want, for the reſt ſhall be paid in due Time; adding, Sir *George*, this muſt be well followed, and cloſely obſerved, becauſe ſo much depends upon it; for if we ſhould miſs killing him at *Windſor*, and you ſhould miſs killing him Your Way, we will do it at *New-Market*: Sir *George* anſwered, if I find you ready, I will be ready in all Things. The Deponent ſaid, he did not know whether the Word *Poiſon* was mentioned, but he knew, by what Mr. *Harcourt* and others had told him, that Poiſon was meant; there was no body in the Room but Sir *George*, *Harcourt*, and himſelf; and Sir *George* asking Mr. *Harcourt* who he was, *Harcourt* ſaid, a Friend, that had been long engaged in their Buſineſs, and was to do the next great Work to his: That Sir *George* going into *Fleet-ſtreet* the ſame Day, to get his Bill accepted; the Deponent met him there, and asked if it was accepted, and Sir *George* anſwered it was, and he was to receive the Money that Afternoon: That the Deponent asking *Harcourt*, after Sir *George* was gone, whether this was Part of the 15000 *l.* he anſwered,

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answered, that Matter was not adjusted yet; he only received this as a present Supply, but it was for the same Design, if they should fail of other Means; and that Sir *George* in a short Time received as much as made the 2000 five thousand Pounds.

Bedloe's *Evidence against* Corker.

As to *Corker*, *Bedloe* deposed, that he heard him talking with *Le Fevre*, of the Letters they had received from beyond Sea, and how forward they were here in raising an Army; what Interest they had in the People, and who had been sent to in the Country.

Corker demanded, if he heard the Words *Killing*, *Army*, or *Design*; *Bedloe* said, every one of those Words were used; but he could not say how they were placed.

Against Marshal.

As to *Marshal*, *Bedloe* deposed, that he communicated the Letters, the Deponent brought from beyond Sea, to the Country Gentlemen who were to assist them in the Design, particularly to Sir *Francis Ratcliff*; and that they treated of the Subversion of the Government, and introducing Popery: After which Sir *George Wakeman* and *Bedloe* had the following Dialogue in Court.

A Dialogue between Wakeman *and* Bedloe.

Sir *George Wakeman*. What Day was it I had the Discourse you mention with *Harcourt*, and received the Bill from him?

Bedloe. It was the Beginning of *August*, (but I do not speak to a Day) and you read it aloud.

Wakeman. Had I any acquaintance with you?

Bedloe. No, but *Harcourt* told you who I was.

Wakeman. And would I, on the first Sight of you, discover what would endanger my Life?

Bedloe. Ay; and an hundred Times more, if *Harcourt* had told you I was his Confident.

Wakeman. You do not know me?

Bedloe. Yes I do.

Wakeman. I call God to Witness, I don't know I ever saw you; and you have a very remarkable Face.

Bedloe. I was well enough acquainted with him when he was at the *Bath*, but that is some Years since; then I took Physick of him. *Wakeman* said, I never was there but once, and that was about two Years ago; and though he tells you of a Bill delivered me, he neither mentions the Time when, nor on whom it was drawn: Here are all the Marks of Falshood imaginable; and here is Mr. *Chapman*, Mayor of *Bath*, who received the Note *Oates* mentions, concerning the Directions for Mr. *Ashby* at the *Bath*, and he thought he had Part of the Letter.

Oates said, that Letter was half a Sheet of a Side, close written; and he remembered, *Ashby* was to take half a Pint of Milk, Morning and Evening, and have so many Strokes of the Pump; but this was ten Days before *Ashby* went to the *Bath*.

The Chief Justice demanded, if the Business of killing the King was in the same Letter with the physical Directions?

Chapman a *Witness for* Wakeman.

To which Mr. *Oates* answering Yes, Mr. *Chapman* appeared as a Witness for Sir *George*, and deposed, That the 17th of *July*, 1678. Mr. *Ashby* came to the *Bath*; that he was about eighty Years of Age, very feeble and infirm; and telling the Deponent, that Sir *George Wakeman* had recommended him to him, and desired he would provide him a Lodging as near the King and Queen's Bath as he could, the Deponent did so; and *Ashby* shewed him a Letter from Sir *George*, of which that he produced in Court was the lower Part of half a Sheet of Paper, containing full Directions how Mr. *Ashby* was to take Physick, and use the Bath, and the Pump: That the Deponent took the *Latin* Bill, which concerned him, and returned the other Part of the Letter to Mr. *Ashby*; though his Son and he both read the *English* Part, and, upon the Word of a Christian, there was nothing mentioned of killing the King; but he did not know the Hand, neither was there any Name subscribed to it.

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The Chief Justice observed thereupon, that this could not be the same Letter *Oates* mentioned; for that was of Sir *George*'s Handwriting, and his Name subscribed to it.

Wakeman's *Defence*.

To which Sir *George* answered, that he never wrote any other Letter, but that which he dictated to his Man, and sent by Mr. *Ashby* to the *Bath*; and said, that *Oates* owned before the Lords, that he sent but one Letter; and had he mentioned the Contents to be such as he had sworn in Court, he should infallibly have been taken into Custody; but he had his Liberty, and might have gone to *Constantinople*, if he pleased, and should certainly have made his Escape, if he had been guilty, after he saw so many apprehended on that Account.

The Court demanded of Mr. *Chapman*, if there was any Milk mentioned in that Letter? To which Mr. *Chapman* answered, No: It would be ridiculous to drink Milk with the Waters; it would make them curdle.

Oates said, this Letter was not the same Hand he saw, and the Direction for Milk was while he staid in Town.

Hunt's *Evidence for* Wakeman.

Then *Hunt*, Sir *George*'s Servant, deposed, that his Master coming home late and indisposed, and Mr. *Ashby* having sent for Directions for the *Bath*, Sir *George* bid him take Pen, Ink, and Paper, and write what he dictated; and when he had written, there was some Mistake in it, which his Master bid him correct; and afterwards the Deponent wrote it over fair, and carried it to Mr. *Ashby* next Morning; and there was nothing in the Letter but Directions for the *Bath*, whither Mr. *Ashby* was to go the next Morning.

Henningham's *Evidence*.

Eliz. Henningham, another Witness, deposed, that she was present at the Writing of the Letter Sir *George* dictated to his Servant, and there was no such Thing as *Oates* mentioned in it.

Sir Philip Lloyd's *Evidence*.

Sir *Philip Lloyd*, one of the Clerks of the Council, deposed, that on the 30th of *September*, 1678. *Oates* said before the Council, he had seen a Letter from Mr. *White* to Mr. *Fenwicke*, at *St. Omer's*, wherein he wrote Word, that Sir *George Wakeman* had undertaken the poisoning the King, and was to have 15000 *l.* for it, of which 5000 *l.* were paid by *Coleman*: That Sir *George* being called in thereupon, utterly denied it all, and seemed

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ſeemed under no Concern at the Accuſation: And *Oates* being called in again, the Lord Chancellor demanded of him, if he knew any Thing perſonally of Sir *George*; and *Oates* lifted up his Hands, and ſaid, *No: God forbid, he ſhould ſay any Thing againſt Sir* George Wakeman, *for he knew nothing more againſt him. Oates* hereupon appealed to the whole Board, whether he was in a Condition to make any Anſwer at all; for he had been hurried, he ſaid, and ſat up two Nights, inſomuch that he was ſcarce *Compos mentis.*

The Chief Juſtice anſwered, Was Mr. *Oates* ſo ſpent, that he could not ſay, *I have ſeen a Letter under Sir* George Wakeman's *own Hand?* Truly Sir *George* urged it right, that he would not have been permitted to have had his Liberty ſo long, if *Oates* had charged him with this then.

Oates *reflects on the Council Board.*

Oates replied, *They were ſuch a Council as would commit No-body:* Whereupon the Chief Juſtice reprehended him, and ſaid, he had a great deal of Aſſurance; but the Council's not committing Sir *George* was an Argument to him, that *Oates* did omit to charge him with the Letter at that Time.

The Court refuſe to hear the Evidence before the Lords and the Council.

Sir *George* deſired a Copy of *Oates*'s Examination before the Houſe of Lords might be read; but the Court would not permit it, becauſe there was no Witneſs to ſwear that they ſaw ſuch an Examination ſworn and ſubſcribed by *Oates.*

Then Sir *George* deſired, Sir *Philip Lloyd* might depoſe what *Oates* and *Bedloe* had ſworn before the Council; but this was held not fit to be done without the Leave of the Board.

Marſhal's *Defence.*

Marſhal then applied himſelf to his Defence, and deſired *Bedloe* would lay his Hand upon his Heart, and declare in the Preſence of God, if ever he ſaw him before he came to the *Gate-Houſe:* and did not declare there, that he was an utter Stranger to him.

Bedloe anſwered, he had ſeen *Marſhal* before, at the *Benedictine* Convent in the *Savoy:* And Sir *William Waller* depoſed, that he went to the *Gatehouſe* with *Bedloe*, and *Bedloe* called *Marſhal* by his Name, as ſoon as he ſaw him; and *Marſhal* thereupon ſaid, he had ſeen his Face, but did not know him.

Marſhal demanded of *Bedloe*, when he ever ſaw him, before he ſaw him in the *Gatehouſe?* *Bedloe* anſwered, he carried Letters for him and uſed to converſe with him, in the *Savoy.* *Marſhal* replied, Prove it by Man, Woman, or Child, that ever you were in the *Savoy* with me in your Life, and I will go to the Gallows, and not ſay one Word more. *Bedloe* ſaid, he had Witneſſes to prove it; but they were in *Kent.*

Corker's *Defence.*

Corker in his Defence ſaid, It was an eaſy Matter to deviſe Crimes, and frame Accuſations againſt innocent Men, in ſuch a Manner that the contrary could not poſſibly be demonſtrated; therefore there ought to be ſome Probability in the Teſtimony, as well as downright Swearing; otherwiſe Mr. *Oates*, and his Companions, might, upon their bare Oaths, by Turns, hang up all the innocent Men in the Nation: Beſides, he that ſwears ought to be a credible Witneſs; but thoſe, who ſwore againſt him, were Men of ſcandalous Lives.

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The Chief Juſtice ſaid, he muſt not heap up Contumelies, and call Men Names, when he had proved nothing againſt them.

Then *Corker* obſerved, that Mr. *Oates* did not only make him guilty of this great Conſpiracy, but involved the Nobility, Gentry, and the whole Body of the Catholicks, in this Treaſon; and he thought it highly improbable, that ſo many Perſons of Honour and Eſtates, who were Men of unblemiſhed Characters, and lived in Peace and Quiet under the Government of ſo good a King, ſhould hazard their Lives, Honours, Families, and Souls in ſuch a Deſign, wherein ſo many thouſands of People, and almoſt a whole Nation, were to be overwhelmed; that ſuch vaſt Armies ſhould be raiſed, and foreign Nations engaged in the Plot, and no other Evidence, no other Proofs of it, than the poſitive Oaths of *Oates* and *Bedloe.* And the Chief Juſtice obſerving, that *Dugdale* and *Prance* were Witneſſes of the Deſign to raiſe an Army, *Corker* went on, and ſaid, Conſidering what theſe Perſons were, their vile Oaths, the Encouragements they had met with, ſuch Endearments and Careſſes as they had found, their Teſtimony was not much to be regarded. --- That it was impoſſible he could have been at *Lamſpring*, the fartheſt Part of *Weſtphalia*, as Mr. *Oates* had depoſed, ſince he was not abſent ſix Weeks: Neither was he Preſident of the *Benedictines*, as Mr. *Oates* had ſworn, and produced Witneſſes to prove, that Mr. *Stapleton* was then Preſident.

Both *Corker* and *Marſhal* alſo brought Witneſſes to prove, that when *Oates* came to the *Savoy*, to ſearch for the Conſpirators, and *Pickering* was taken, *Oates* declared he had nothing againſt *Corker* and *Marſhal*; and they were not taken up till a Month afterwards, when *Oates* had improved in his Evidence. Then *Corker* deſired, (as Sir *George Wakeman* had done already) that a Copy of *Oates*'s Examination in the Houſe of Lords might be read; wherein he ſaid, that he knew nothing more of the Plot, or any other Perſons concerned in it, than what he declared there; but this the Court would not ſuffer to be read, affirming it was no Evidence.

Then Mrs. *Rigby*, the Houſe-keeper of the *Benedictine* Convent, was called, as a Witneſs for the Priſoners, *Marſhal* and *Corker*, and depoſed, that ſhe knew of no Conſult of the Jeſuits at that Houſe, and that ſhe never ſaw Mr. *Oates* there, unleſs in the preceding Summer, 1678, when he came a begging, and Mr. *Pickering* bid her ſhut the Door, and never let that Man come in again.

Marſhal's *Defence continued.*

Whereupon *Marſhal* obſerved, that this was in the very Heat of the Plot; and it was ſtrange, if *Oates* was employed to carry on the Conſpiracy, as he had ſworn, that they ſhould ſuffer him to be in ſuch Neceſſity, and ſent away with a Flea in his Ear, when he could gain ſuch Advantages by diſcovering them; and deſired he might have two or three Days Time allowed him, to ſend for Witneſſes, to prove he was in *Warwickſhire* in *June*, *July*, and *Auguſt*, when *Oates* ſwore he was in *London*; and

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and ſaid, he hoped the Court would not throw away his Life, when in three Days Time he could bring Witneſſes to prove it. The Chief Juſtice anſwered, then they muſt throw away the Lives of the Jury, for they muſt be kept faſting till they gave thrir Verdict. *Marſhal* replied, there had been Priſoners (meaning *Whitebread* and *Fenwicke*) upon their Trials, ſent back to Priſon without the Jury's giving a Verdict, and afterwards tried again. The Chief Juſtice ſaid, the Jury were wholly diſcharged of them. *Marſhal* anſwered, if the Court had any regard to his Life, they would diſcharge the Jury of him too, and produced a Witneſs, who depoſed, that *Marſhal* had his Witneſſes in Town the laſt Seſſions, to prove he was in *Warwickſhire*.

Here Sir *George Wakeman* and *Corker* made great Proteſtations of their Innocence, and their Abhorrence of Treaſon, and the King-killing Doctrine. And *Marſhal* continuing his Defence, ſaid, if no Door of Mercy could be opened, upon any Conſideration offered by the Living, yet the loud Cries of the Dying, the earneſt Vows and ſolemn Proteſtations of Innocence, made by thoſe who were lately executed, would ſurely have ſome Weight; for it muſt be confeſſed, that either they conſpired finally to damn their own Souls, or that they were not guilty of what they, and the Priſoners at the Bar, ſtood jointly charged with.

Juſtice *Pemberton* demanded, if they would affront the Court, and vouch the Truth of thoſe Speeches made at the Gallows; and affirm them to be innocent, when they had been found guilty, and executed according to Law.

Marſhal replied, he only deſired ſome Conſideration might be had to the Words of dying Men.

The Court charge the Priſoners with the King-killing Doctrine, &c.

The Chief Juſtice ſaid, If your Religion was not made up of Equivocation and Lying, and you had not Indulgences and Diſpenſations for it, and if killing Kings were not deemed meritorious; if this were not avowed by your Popes and Great Men, your Argument might have ſome Weight. We know what your Religion is, and what merciful Men you are: You may have Tricks enough to gull your own Party; but Proteſtants can ſee through all your Actions.

They diſclaim it.

Corker anſwered, as to thoſe damnable Doctrines, they profeſſed themſelves innocent of them; and deſired the Jury might not go away with a Notion, that they entertained ſuch Principles of Religion: Theſe were horrid Crimes; they proteſted againſt them, and hoped the Jury would take Notice of it.

The Chief Juſtice of Opinion, the Evidence was defective.

Then the Chief Juſtice ſummed up the Evidence; and as to *Rumley*, he directed the Jury to acquit him, becauſe there was but one Witneſs againſt him; and he ſaid, he thought that *Oates*'s Evidence, as to Sir *George Wakeman*'s Hand-writing, was very ſlight; and *Bedloe*'s Evidence againſt *Wakeman*, he did not give much Credit to; nor did he think the Evidence of *Oates* and *Bedloe*, againſt *Corker* and *Marſhal*, concluſive, he ſaid; but left it impartially to the Jury, to be guided by their own Conſciences.

The Jury being withdrawn, after an Hour's Receſs, returned into Court with their Verdict, that the Priſoners were NOT GUILTY.

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Wakeman, &c. *acquitted.*

The Trials of theſe pretended Plotters were always introduced with violent declamatory Speeches of the King's Counſel, to prepoſſeſs and prejudice the Jury againſt them; and Witneſſes were produced to give a moſt tragical Account of the Plot in general, though this was acknowleged to be no Evidence againſt the Priſoners. The Judges alſo ſuggeſted perpetually, that the Priſoner's Witneſſes were not to be believed, becauſe they were Papiſts, and under ſuch Diſadvantages, ſcarce any of them could have eſcaped, if *Oates* and *Bedloe*, and the reſt of the ſwearing Tribe, had not over-acted their Parts, and by numerous Improbabilities and Contradictions in their Evidence, ſtaggered the Faith of the moſt willing Believers. They improved, it appears, in their Evidence and their Impudence every Day; and when they had ſolemnly declared before the Houſe of Lords and the Council Table, that they knew nothing more of the Plot, or the Plotters, than their Examinations and Narratives contained, daily diſcovered new Matter, and more Conſpirators; having the Aſſurance to charge the Privy Council, and ſeveral other great Men among the Proteſtants, as Promoters and Encouragers of the Plot, who were known to be the beſt Friends to the Conſtitution; which rendered the Generality of the People cooler in the Proſecution of Perſons accuſed, than they had been, and Juries more cautious of convicting them: The Proteſtations of ſo many dying Men, that they knew nothing of any Plot, had alſo ſome Effect upon the People, and induced them to weigh the Evidence againſt thoſe unhappy Men, more ſedately and impartially than they had done the Evidence given at former Trials.

Remarks on their Trials.

No Gentleman appears to have been more zealous in proſecuting the Popiſh Plot at firſt, then the Lord Chief Juſtice *Scroggs*; but at theſe Trials we find he violently ſuſpected the Roguery of the Witneſſes, and, in a manner, directed the Jury to acquit all the Priſoners, who paid the greater Regard to his Opinion, no doubt, becauſe they had ſeen him ſo ſtrenuous an Aſſerter of the Reality of the Plot at the former Trials. There was no room to ſuſpect the Chief Juſtice to be partial in the Priſoners Favour, after what he had ſaid and done to forward the Conviction of *Coleman*, *Ireland*, and the five Jeſuits: None but a Man of *Oates*'s Aſſurance, could ever have charged him with diſcountenancing the Diſcovery of the Plot afterwards. Here we have a fair Opportunity of obſerving, how eaſily the People of this Nation are carried away by popular Clamours, and the Arts of deſigning Men, who ever do their Buſineſs more effectually, by applying to the Paſſions of Men than their Reaſon. The People were ſo terrified and confounded at the Apprehenſions of an approaching general Maſſacre, that for ſome Time they ſeemed to have loſt their Senſes: They did not ſo much as reflect, what an inconſiderable Number the Papiſts in *England* were, compared with the Proteſtants; and that an Attempt of that Nature muſt have ended

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in the utter Deſtruction of the Roman Catholicks, if it did not ſucceed; as it was impoſſible it ſhould, where the Papiſts were not one in a Hundred, and had neither the Miniſtry, Forces, or any one Civil Magiſtrate to ſupport them; for, according to *Oates*'s firſt Diſcovery, the King, the Duke of *York*, and the Miniſtry, both in *England* and *Ireland*, were to be ſacrificed with the Reſt; though afterwards, indeed, when *Oates* found how greedily his Narrative was ſwallowed, he ventured to charge the Queen, the Duke, the Privy Council, Miniſters, and Judges, with encouraging and favouring the Plot; that is, with a Deſign of murdering the King, and maſſacring all true Proteſtants: A Tale ſo monſtrous and improbable, that it evidently diſcovered the whole to be an Impoſture, and ſhewed how miſerably the People had been impoſed upon by the Faction, and the Perjuries of their wretched Inſtruments.

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The Trial of CHARLES KERNE, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Hereford* Aſſizes, the 14th of *Auguſt*, 1679. 31 *Car.* II.

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Kerne's *Trial.*

The Charge.

THE Indictment charged the ſaid *Charles Kerne* with High-Treaſon, in coming to *England*, and remaining here, after he had received Popiſh Orders, contrary to the Statute 27 *Eliz.*

The Evidence.

The Witneſſes for the King being called, one of them depoſed, that ſhe ſaw the Priſoner in a Surplice deliver the Sacrament to four or five People in a Popiſh Chappel, and that he uſed the Words *Corpus Chriſti*, or ſome ſuch Words as Prieſts uſe at the Sacrament; for ſhe herſelf was a Roman Catholick at that Time.

Another Witneſs depoſed, that ſhe was in a Chamber, and heard the Priſoner Chriſtening a Child in the next Room.

The Defence.

The Priſoner ſaid little in his Defence, but that the Witneſſes were inſtructed what to ſay; that he had taken the Oaths of Allegiance and Supremacy; and that there was no Evidence of his being a Prieſt: And probably he thought the Proof ſo defective, that there was no Occaſion to ſay much; for the Chief Juſtice, in his Directions, told the Jury, that there ought to be two Witneſſes in High-Treaſon, and here was but one Witneſs to prove the Priſoner exerciſed his Function, beſides the Maid, who ſaid ſhe heard him baptize a Child through a Wall; but this was a tender Point (I preſume, he meant the Witneſſes ſwearing to a Man's Chriſtening a Child through a Wall, when ſhe did not pretend to know what he ſaid, was a tender Point); and as he would not ſhed innocent Blood, ſo neither would he willingly let a Popiſh Prieſt eſcape; and leaving it to the Jury, they found the Priſoner NOT GUILTY.

The Priſoner acquitted.

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The Trial of ANDREW BROMWICH, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Stafford* Aſſizes, the 13th of *Auguſt*, 1679. 31 *Car.* II.

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Bromwich's *Trial.*

Jurors diſcharged on Suſpicion of their being Popiſhly affected.

THE Priſoner being arraigned, and the Jurors called, the Sheriff acquainted the Chief Juſtice, that *Allen*, one of the Jurors he had returned, declared, that as nothing was done againſt the Popiſh Prieſts above, ſo neither would he do any thing againſt them here, or find them guilty, and thereupon *Allen* was committed to Priſon by the Chief Juſtice, till he ſhould find Sureties for his good Behaviour; and he diſcharged three more of the Jurors, on Suſpicion of their being Popiſhly affected. After which a Jury was ſworn and charged with the Priſoner, who challenged none of them.

The Charge

The Indictment ſet forth, that the ſaid *Andrew Bromwich*, being a Native of *England*, and ordained a Prieſt by an Authority derived from the See of *Rome*, did on the 13th of *January*, in the 30th Year of the preſent King, come to, and remain at *Perry Barr* in the County of *Stafford* in this Kingdom, contrary to the Statute, which made the ſaid Offence High-Treaſon.

The Evidence.

The Witneſſes being called, *Ann Robinſon* depoſed, that ſhe received the Sacrament of the Priſoner in a Wafer five Times, according to the Manner of the Church of *Rome*.

Jeffery Robinſon depoſed, he had heard the Priſoner ſay ſomething, in a Surplice, in an unknown Tongue; but he could not ſay what it was; and the Court demanding if he knew the Priſoner, he declared he did not know him.

Jane Robinſon, *Jeffery*'s Wife, being ſworn, and the Court demanding of her, if ſhe ever heard the Priſoner ſay Maſs, or received the Sacrament of him, ſhe anſwered, ſhe never ſaw him do any thing; ſhe did not know him.

The Defence.

The Priſoner in his Defence, denyed his having ſaid Maſs, or given the Sacrament to any of the Witneſſes; alledged, he had taken the Oaths of Allegiance and Supremacy, and done every thing that might teſtify his Loyalty; and inſiſted that there was no Evidence of his being a Prieſt.

The Chief Juſtice's Obſervations.

The Chief Juſtice replied, none but a Prieſt could give the Sacrament in a Wafer; and though *Jeffery Robinſon* pretended he did not know the Priſoner, he had ſaid at firſt, that he heard him ſay ſomething, in a Surplice, in an unknown Tongue; that this Witneſs durſt

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ſay no more than his Wife and his Prieſt would give him Leave to ſay, and they could not expect more poſitive Evidence from theſe People.

Then he ordered the Statute of 27 *Eliz.* Cap. 2. to be read, which makes it High-Treaſon, for Popiſh Prieſts, Subjects of this Crown, to remain in *England*; and in his Directions to the Jury, informed them that they were not to find poſitively that the Priſoner was a Prieſt; but if they believed in their Conſciences, upon the whole Evidence, that he was a Prieſt, they were to find him guilty: That here was one poſitive Witneſs, and another had ſworn he heard the Priſoner ſay ſomething in an unknown Tongue, in a Surplice; and he left it to them, whether they would not believe the Teſtimony of one poſitive Witneſs, and the circumſtantial Evidence of the other Man: They ſaw what Dangers they were in, and he left it upon their Conſciences, whether they could let Prieſts eſcape, who were the very Peſts of Church and State; declaring, *they had better get rid of one Prieſt, than three Felons.*

and Directions to the Jury.

The Jury being withdrawn, and continuing without ſome Time, at laſt brought in a Verdict, that the Priſoner was GUILTY: Whereupon the Chief Juſtice commended the Verdict, and ſaid he ſhould have found the ſame Verdict himſelf.

The Priſoner convicted.

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The Trial of WILLIAM ATKINS, Clerk, for *High-Treaſon*, before the Lord Chief Juſtice *Scroggs*, at *Stafford* Aſſizes, the 13th of *Auguſt*, 1679. 31 *Car.* II.

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Atkins's Trial.

The Charge.

THE Indictment was of the like Tenor as the former, *viz.* That the Priſoner being a Native of *England*, and having accepted Popiſh Orders, came to *Wolverhampton* in *Staffordſhire*, and remained there, contrary to the Statute; which made this Offence High-Treaſon; and the ſame Jury was charged with the Priſoner, as had tried *Bromwich*. Then the Witneſſes being called.

The Evidence.

Francis Wilden depoſed, that he had heard the Priſoner at Prayers in an unknown Tongue with a Surplice on, and ſeen him give the Sacrament after the Manner of the Church of *Rome*, to ſeven or eight People, at Mrs. *Stamford*'s in *Wolverhampton*.

John Jarvis depoſed, that he had heard the Priſoner ſay ſomething in an unknown Tongue; that he had confeſſed to him, and received the Sacrament of him a great many Times when he had his Prieſt's Habit on. A third depoſed, he had confeſſed to him, and a fourth, that he had been at Confeſſion, and ſeen the Priſoner perform divine Service according to the Manner of the Church of *Rome:* And the Priſoner finding the Evidence ſo full againſt him, made no Defence; whereupon the Jury found him GUILTY, and the uſual Sentence in Caſes of High-Treaſon was pronounced on him and *Bromwich*.

No Defence made, he is convicted.

Sentence paſſed on Bromwich *and* Atkins.

Remarks on the three preceding Trials.

The timerous Chief Juſtice having been threatened and bullied by the Leaders of the Faction and their Tools, *Oates*, *&c.* for ſhewing himſelf impartial at the Trial of *Wakeman*, *Corker*, *&c.* ſeems to be endeavouring at theſe three Trials to make amends for his Remiſſneſs, by delivering up theſe unhappy Prieſts to the Fury of the Populace; concluding that his Conduct at theſe Trials would for ever wipe off the Reproach of his attempting to ſtifle the Popiſh Plot, with which *Oates* and his Brethren of the Poſt, had endeavoured to charge him.

The Statute of 27 *Eliz.* indeed makes it High-Treaſon for an *Engliſh* Prieſt to be found in *England*; but then the Statute does not aſcertain what ſhall be deemed legal Proof of a Man's being a Prieſt; whereupon the Judges have determined that a Man's exerciſing any Part of the Prieſtly Office, whether he be really a Prieſt or not, ſhall be deemed ſufficient Proof of his being a Prieſt, which ſeems to be a pretty handſome Stretch upon ſo penal a Law, eſpecially as the Offence is purely the exerciſing an Act of Religion, and the Parties have committed no Offence againſt the State, as in this Caſe. But the Chief Juſtice goes ſtill farther, and informs the Jury, that notwithſtanding two Witneſſes are required in High-Treaſon, yet, *if they believed in their Conſciences from the Circumſtances*, that the Priſoners were Prieſts, though there was but one poſitive Witneſs of their exerciſing the Prieſtly Office, it was ſufficient: He would not, he told them in *Kerne*'s Caſe, willingly ſhed innocent Blood; (one of the Witneſſes ſwearing only that ſhe heard the Priſoner ſay ſomething ſhe did not underſtand through a Wall;) but on the other Hand, he would not willingly have one Popiſh Prieſt eſcape; intimating that he would have every Popiſh Prieſt hanged, if it was for no other Offence, but purely for being a Prieſt, and that upon every ſlight Evidence: Though the Lawyers had always held till this Time, that thoſe Laws were only made *in terrorem*, and were never intended to be put in execution rigorouſly. In all the former Trials for the Popiſh Plot, the King's Council ſeemed to make a Merit of it, that they did not proſecute the Jeſuits and popiſh Prieſts purely on account of Religion; and of all the Prieſts that were tried at *London*, either in this, or in any former Reign, I do not remember any that were executed purely for being Prieſts. It was not thought fit to make ſuch Examples, even now in the Capital City, whatever was done on the Borders of *Wales* in a Corner of the Kingdom, leſt the ſame ſhould have been taken notice of by Foreigners, and retaliated on the Proteſtants of other Countries. But ſuch was the Fury of the Faction at this Time, that the Government was in a Manner compelled to give up theſe unhappy Men to their Rage; even the Chief Juſtice was content to be their Inſtrument, to ſave himſelf from being perſecuted

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as a Promoter of Popery; and yet this would not skreen him from their Reſentment, as appears from future Proceedings.

Whether it was ſtrictly legal to diſcharge three of the Jurors *upon Suſpicion* they were popiſhly affected, as was done in *Bromwich*'s Caſe, eſpecially as there was no Proof of it, and it does not appear they were regularly challenged for the King, is very much to be queſtioned; but to tell the Jury, *if they believed the Priſoner to be guilty, (though there were not two Witneſſes) this was Satisfaction to find him guilty*; was certainly carrying Things a great deal too far; as two poſitive Witneſſes are ever required in Treaſon. Nor did the chief Juſtice ſhew any great Impartiality, when he alarmed the Jury with the pretended Dangers that threatned them from the Papiſts, and telling them *they had better rid the World of one Prieſt, than three Felons*; but this, as I have already obſerved, was to curry favour with the Faction. If he could have reſtored himſelf to the good Graces of the Populace, by ſacrificing an old Prieſt or two, he would have thought it an excellent Expedient; but he lived to repent his Eaſineſs, and found his Enemies were not to be appeaſed by a leſs Sacrifice than that of his own Head, which they bid fair for afterwards. May all timerous Magiſtrates and Time-ſervers meet with the like Fate.

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The Trial of THOMAS KNOX, (Servant to the Earl of *Danby*,) and JOHN LANE, for a *Miſdemeanor*, at the *King's-Bench* Bar, the 25th of *November*, 1679. 31 *Car.* II.

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The Trial of Knox *and* Lane.

The Indictment.

THE Indictment charges, that the Defendants, *Knox* and *Lane*, knowing that *Oates* and *Bedloe* had been Witneſſes againſt *Coleman*, *Ireland*, *Grove*, and other Traitors, who had been executed for their Treaſons; and knowing the Lords *Powis*, *Stafford*, *Bellaſis*, *Arundel*, *Petre*, and Sir *Henry Tichburne*, were accuſed of Treaſon, and committed to the *Tower*, and ſtood impeached by the Houſe of Commons for the ſame; and that *Thomas* Earl of *Danby* alſo was impeached of High-Treaſon and other Miſdemeanors; they the ſaid *Knox* and *Lane*, intending to ſtifle the Diſcovery of the ſaid Treaſons, and to evade the Laws and the Proſecution of Juſtice againſt the ſaid Lords and Sir *Henry Tichburne*, did, on the 30th of *April* in the thirty firſt Year of his preſent Majeſty, falſely and maliciouſly conſpire to ſcandalize the ſaid *Oates* and *Bedloe*, and to repreſent them as wicked Perſons, and Men of no Credit. And that the Defendant *Knox*, by the Agreement of the Defendant *Lane*, and one *Osborne*, did cauſe ſeveral Letters to be written, wherein the ſaid *Oates* and *Bedloe* were accuſed of conſpiring falſly to charge the ſaid Earl of *Danby*; and ſuggeſting that *Oates* was a vicious Perſon, and would have committed Sodomy on the ſaid *Lane*; and that *Knox*, the better to effect the ſaid wicked Deſigns; gave ſeveral Sums of Money to the ſaid *Lane* and *Osborne*, and promiſed them great Rewards. All which is ſaid to be contrary to their Duty; to the Obſtruction of Juſtice, *&c.*

The King's Council's Obſervations upon it.

The King's Council, in opening the Indictment, obſerved to the Jury, that the Queſtion to be tried by them, was not whether the Lords, and others, charged with the Treaſons mentioned in the Indictment, were guilty of the Popiſh Plot; but whether the Defendants, in this Indictment, were guilty of endeavouring to diſcountenance and ſuppreſs the Evidence, and of ſcandalizing the Witneſſes who were to give Evidence againſt the Lords, and the reſt of the Priſoners; informing the Jury, that the endeavouring to withdraw, or diſgrace the King's Evidence in any Caſe, was unlawful, but it was ſtill a much greater Offence in Caſes of High-Treaſon; and as ſeveral Perſons had been attainted and executed for theſe Treaſons, the Defendants had affronted and diſparaged the Juſtice of the Nation, which was not to be endured.

The Evidence of Radford.

The Witneſſes being called, Mr. *Radford* was ſworn, and depoſed, that *Richard Lane*, Father of the Defendant, *John Lane*, was one of the Yeomen of the Guard, as the Deponent alſo was; and that they being upon Guard together about a Year before, *Richard Lane*, the Father, told the Deponent, that *Oates* had attempted his Son, *John Lane*, the Defendant, ſeveral Times, in order to commit Sodomy with him.----*Samuel Oates*, Brother to *Titus Oates*, depoſed, that *John Lane*, the Defendant was Servant to his Brother *Titus*, and turned away twice; and he heard him ſay, as he was jeſting with the Servants, a Fortnight before he was turned away the laſt Time, that he did not queſtion, ere long to find away to get a thouſand Pounds.

Of Samuel Oates.

Of Sir William Waller.

Sir *William Waller* depoſed, that as he was attending the Committee of Lords appointed to enquire into the Plot on the 29th of *April* laſt, a Complaint was brought before them, that *Oates* had attempted to commit Sodomy with his two Servants, *Osborne* and *Lane*: and thereupon the Lords ordered the Deponent, and Mr. *Warcop*, another Juſtice of Peace, to take the Examinations of *Osborne* and *Lane*: And *Lane* confeſſed, he had been ſeduced by *Knox* to betray his Maſter *Oates*, and ſwear ſeveral Things againſt him which *Knox* dictated; and *Lane* then produced ſeveral Informations, charging *Oates* with Sodomy; which he acknowledged had been carried by *Knox*, *Osborne*, and himſelf, to ſeveral Juſtices of Peace, charging *Oates* with attempting to commit Sodomy on the ſaid *Lane*, but no Juſtice of Peace would meddle with it. And that afterwards *Knox* took private Lodgings for *Lane* and *Osborne*, that *Oates* might not find them out; perſuading them to ſtand faſt to what they had ſaid, and they ſhould not want a conſiderable Reward:

That

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That *Lane* depoſed farther, before him, the ſaid *Waller*, and Mr. *Warcop*, that *Knox* dropped a Guinea at a Tavern, and ſaid he would not give it them, becauſe then he could ſwear ſafely, he never gave them any Money: And that *Knox* told them, the ſaid *Lane* and *Osborne*, that the Lord Treaſurer *Danby* would never have ſurrendered himſelf, unleſs they promiſed to ſtand faſt by the Evidence *Knox* had dictated. Sir *William Waller* farther depoſed, that, as they were taking *Lane*'s Examination, *Knox* wrote a Note to *Lane*, which was conveyed through the Door, of the following Tenor: *We always clubbed, and you paid two Shillings at the* Sugar-Loaf: *Tear this.* And that *Lane* confeſſed, it was agreed amongſt them, that if any one of them ſhould diſcover, the other two ſhould murder him: And that both *Lane* and *Osborne* confeſſed, that *Knox* ſaid, the Lords in the *Tower* would not be wanting to acknowledge their Kindneſs, in diſparaging the King's Evidence.

Sir *William Waller* depoſed farther, that *Knox* alſo was brought before him and Mr. *Warcop*, and to excuſe himſelf, ſaid, he received the Papers from *Lane* and *Osborne*, and that they told him they wrote them out, being troubled in Conſcience, and deſired him to go with them to a Juſtice of Peace: That *Knox* confeſſed, he dropped a Guinea, and alſo ten Shillings, upon a Bed one Morning, but ſaid, he lent it them, and they were to repay him again. *Knox* alſo confeſſed, that the Papers ſo drawn up and delivered to him, had been in the keeping of the Lord *Latimer* a long Time.

Of Mr. Warcop. Juſtice *Warcop* depoſed to the ſame Effect as Sir *William Waller* had done, adding, that *Lane*, when he was before the Committee, begged their Pardon, and God's Pardon, for what he had ſworn againſt *Oates*, for it was all falſe: And that *Knox* acknowledged, he lay with *Lane* and *Osborne*, in ſeveral private Places, when Warrants were out for apprehending them; adviſed them where to lie concealed, and paid for their Lodgings, but ſaid they were to pay him again; and that *Osborne* and *Lane* both ſwore that *Knox* paid for all, treated them ſeveral Times at the Tavern, and bid them call for what they would have.

Of Wiggins. *Wiggins*, Servant to *Bedloe*, depoſed, that being with *Knox* at a Publick-Houſe, *Knox* deſired him to get Copies of his Maſter *Bedloe*'s Papers, eſpecially ſuch as concerned the Lord Treaſurer *Danby*, and to take a Journal of his Maſter's Actions, and the Names of thoſe that came to him; for the Lord Treaſurer had heard, that Lord *Shaftesbury* and the Duke of *Bucks* caballed with *Bedloe* againſt him: That *Knox* offered to carry the Deponent to the Lord Treaſurer, who would give him Encouragement, he ſaid; and that *Knox* added, *Oates* and *Bedloe* were two great Rogues, the King knew them to be ſo; and when he had heard all they could ſay, he would hang them: and that if the Deponent was turned out of his Buſineſs, he ſhould have any Place in his Lord's Diſpoſal.

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Of Dangerfield. *Thomas Dangerfield* depoſed, that he was employed by the Lady *Powis* to carry Money to the Defendant *Lane*, in the *Gatehouſe*, ſeveral Times, and particularly once he received twenty Shillings of Mrs. *Celier*, by the Lady *Powis*'s Order and ſent it to *Lane*; and that the Defendant *Knox*, deſiring *Lane* would write ſomething to ſignify he continued firm, *Lane* wrote a Note of the following Tenor, (viz.) *That he would die before he would comply with that Villain* Oates, *and if any good People would get him his Liberty, he would do the Catholicks great Service, by diſcovering what he knew of* Oates; *declaring he wrote this from the Bottom of his Heart, and would die in it:* That this Note been carried to the Lady *Powis*, ſhe and the Lord *Powis* were much rejoiced at it; and he was told the Lady *Powis* was the greateſt Part of the next Day upon her Knees, giving God Thanks for the great Advantage their Cauſe had gained by it.

That he (the Deponent) afterwards obtained *Lane*'s Liberty, and carried him to *Powis-Houſe*, where he remained ſome Time; but afterwards the Lord *Powis* thought proper to ſend him into the Country, and conceal him there: That the Deponent alſo was employed to procure *Knox*'s Liberty, but could not; however, *Knox* obtained his Liberty afterwards by Mr. *Nevil*'s Means: That the Deponent received ſeveral Papers from *Knox* containing a Charge againſt Mr. *Oates*, for attempting to commit Sodomy with *Lane*, which he ſent by Mrs. *Celier*, to the Lords in the *Tower*, who made their Remarks on them; and that Mrs. *Celier* directed the Deponent to draw up an Affidavit from thoſe Papers, and get *Lane* ſworn to it; which he did, and it was ſworn before Sir *James Butler:* That *Osborne* alſo made an Affidavit, that *Oates* attempted to commit Sodomy with *Lane*, which *Knox* ſhewed to the Deponent, and ſaid it would do *Oates*'s Buſineſs; and the Lady *Powis* afterwards furniſhed *Knox* with Money, underſtanding that his Circumſtances were but low, and that (his Maſter) the Lord Treaſurer, did not ſupply him; and the Deponent let *Knox* have forty Shillings on his complaining of the Diſtreſs he was in, taking a Note of him, as if borrow'd of himſelf.

Knox's *Information.* Then an Information, that *Knox* had ſworn before a Juſtice of Peace, was read; wherein he depoſed, that *Osborne* came to him, and told him he was Servant to *Oates*, and that he had heard *Oates* and *Bedloe* conſulting how they might deſtroy the Lord Treaſurer; and that his Conſcience would not ſuffer him to ſleep till he had revealed it: That *Lane* alſo came to him (the Deponent *Knox*) and gave him the ſame Account, and ſhewed him ſeveral Papers, which were Memorials relating to his Majeſty, the Queen, and the Lord Treaſurer: And that they both conjured him *(Knox)* to keep the Thing ſecret; for they were afraid, if it came to the Ears of *Oates* and *Bedloe*, they ſhould be murdered.

Mr. *Withins*, Counſel for the Defendant, *Knox*, obſerved, that the Indictment conſiſted

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The Defence of Knox *by his Council.*

of two Parts: The firſt charged, that the Defendants, in *April* laſt, did conſpire againſt *Oates* and *Bedloe*, who had diſcovered the Popiſh Plot, to take away their Reputation, and render their Teſtimony of no Credit.

The other Part charged, that *Knox had* cauſed Letters to be written, as from *Osborne* and *Lane*, to himſelf, containing the Aſperſions above-mentioned; but as to the laſt Part of the Charge, there had been no Manner of Proof made of it: And as to the firſt, he did not controvert, but that *Osborne* and *Lane* might have a Deſign to diſgrace *Oates* and *Bedloe*, and to draw his Client *Knox* in to countenance their Malice; but inſiſted that he was not in the Contrivance, for that they had ſhewn the Papers to ſeveral others before they brought them to *Knox*, nor did it appear in the whole Evidence, that *Knox* himſelf had ſworn any thing againſt *Oates* or *Bedloe*; there appeared only a great deal of Weakneſs in *Knox*, in believing ſuch idle People, which he hoped would not be thought a great Crime in a young Man, who had no Malice or ill Deſign in it; but apprehending he had met with a Diſcovery againſt his Lord's Life, was endeavouring to prevent it.

The Defence of Lane *by his Counſel.*

Mr. *Holt*, Counſel for the other Defendant *Lane*, alſo inſiſted, that there had been Evidence given only of one Part of the Charge, in the Indictment; and that the Proof not being proportionable to the Charge, his Client ought to be acquitted, otherwiſe he might become liable to a ſeverer Puniſhment than the Crime proved would juſtify.

The Chief Juſtice's Obſervations.

To which the Chief Juſtice anſwered, If there was Evidence enough to prove a Contrivance to diſcredit them, that was ſufficient. ---Mr. *Holt* deſired to know, if the Jury did not find them *Not Guilty* generally, whether they might not find them not guilty of writing the Letters. The Chief Juſtice anſwered, No; for if five Things were laid, and one of them proved, which tended to the Diſparagement of *Oates* and *Bedloe*, which was the Subſtance of the Charge that maintained the Indictment, that was ſufficient; beſides, the Tranſactions between *Knox* and *Dangerfield* implied a Confederacy; and *Knox* owned he took Lodgings for *Osborne* and *Lane*, and lay with them when Warrants were out againſt them.

To which the Counſel for the Defendant *Knox*, replied, that *Dangerfield* ſwore that *Lane* brought him a Paper, containing the ſame Matter he brought to *Knox*, and that he got it ſworn before Sir *James Butler*; and if *Dangerfield* believed the Charge to be true, and carried *Lane* before a Juſtice of the Peace to ſwear it, why might not *Knox* believe it?

However the Court acquainted the Jury, that the Caſe was ſo clear againſt the Defendants, that they did not ſee any occaſion to ſum up the Evidence; and the Jury laying their Heads together, without going from the Bar, found the Defendants GUILTY. At which the People gave a great Shout; and the Defendant *Knox* was ſentenced to pay a Fine of 200 Marks, to ſuffer one Year's Impriſonment, and to find Sureties for his good Behaviour for three Years. *Lane* was ſentenced to be ſet in the Pillory, to pay a Fine of 100 Marks, and to be impriſoned for a Year; which Sentences were executed upon them.

The Defendants convicted Fined, Pillored, and impriſoned.

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Remarks.

Theſe were very difficult Times; the Faction, by offering extravagant Rewards, had raiſed up a Set of Witneſſes, that appeared ready to ſwear any Man out of his Life, their Maſters were pleaſed to mark out for Deſtruction. They began with Papiſts as moſt obnoxious; againſt whom it was not doubted their Evidence would be eaſily credited; but by degrees they proceeded to accuſe ſome of the beſt and greateſt Proteſtants in the Kingdom with being Popiſhly affected, and engaged in the ſame Deſign, to ſubvert the eſtabliſhed Religion and Government; and this was indeed the principal Deſign of the Faction, in trumping up this Plot, a Stratagem of their Fore-Fathers, revived to charge the Friends of the Church and Government with being Popiſhly affected, and endeavouring to introduce arbitrary Power, in order to ſubvert both Church and State themſelves, and eſtabliſh Presbytery, and a Republican Form of Government in the room of them. There was a Conſpiracy indeed, to deſtroy both our Religion and Government by the Presbyterians, as appeared a very little afterwards, and they had the Cunning to throw it upon the Papiſts, who finding their party every Day cut off by falſe Witneſſes, artfully managed by that Incendiary *Shaftesbury*, endeavoured to countermine his Projects, by offering Rewards to the Witneſſes hired to ſwear againſt them; and by endeavouring to expoſe the ſcandalous Lives of ſome of thoſe raſcally People, dubbed with the Character of the King's Witneſſes; and ſince ſuch vile Arts were uſed to get innocent Men condemned, ſurely the Perſons charged with ſuch Crimes, could not be much blamed, eſpecially by the Faction who taught them the Way, for endeavouring to ſave their Lives by the like Means; as others endeavoured to murder them under a Colour of Law.

Knox depoſed upon Oath, that both *Osborne* and *Lane* firſt came to him, and offered to ſwear Sodomy againſt *Oates*; and that both *Oates* and *Bedloe* were in a Conſpiracy to take away the Life of the Lord Treaſurer *Danby*, which ſeems much more probable, than that *Knox* ſhould frame ſuch a Story, and deſire them to ſwear it, if the Characters of the reſpective Parties be conſidered; eſpecially as it is evident that the Witneſſes ſometimes tampered with the Faction, and ſometimes with the Lords in the *Tower*, to ſee which they could make the moſt of; and when they found the Lords (particularly the Lord Treaſurer) not inclinable to anſwer their Expectations, they betrayed the Inſtruments concerned in theſe kinds of Negociations, in order to raiſe their Merit, and entitle themſelves to the greater Rewards from the Faction.

But further, it is very certain that *Oates* had been charged, and was generally eſteemed guilty of many flagrant Crimes *(and eſpecially of Perjury and Sodomy)* long before he became

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became a Witneſs of the Popiſh Plot; and no wonder if the Noblemen he endeavoured to deſtroy by his Perjuries, made ſtrict Enquiries into theſe Particulars, in order to take off the Credibility of his Teſtimony. This was no more than Self-preſervation prompted them to, and was very far from being Criminal, though it was a very difficult and dangerous Task at this Time, when the People were ſo infatuated as to look upon every Man to be a Papiſt and a Traitor to the Government, who offered to enquire into the Characters of thoſe infamous Wretches. *Knox*, no doubt, hoped to do his Maſter, the Earl of *Danby*, great Service in diſcovering the Deſigns the Faction had againſt him; and encouraged *Osborne* and *Lane* in ſwearing their Depoſitions before a Juſtice of Peace, though his Maſter, it ſeems, refuſed to ſupport him in it, leaſt it ſhould caſt an Aſperſion upon him, and prove diſadvantageous to his Cauſe, for he knew *Shaftesbury*'s Arts; and that he would either corrupt or terrify them to retract what they had ſwore, as he had done by *Dangerfield*, who at firſt was an Evidence for the Popiſh Lords, and afterwards made an Evidence againſt them by ſome ſuch Means.

As to *Oates*'s ſcandalous Life, there are ſome Men perhaps that will give more Credit to Biſhop *Burnet*, than any other Writer in this Matter, who ſpeaking of the Credibility of the Plot, in the firſt Volume of his poſthumous Hiſtory, ſays, *Titus Oates* was the Son of an Anabaptiſt Teacher, who conformed and went into Orders, as his Son the Evidence alſo did: That the Son was an ignorant Man, proud, ill-natured, and haughty, and Complaints had been exhibited againſt him, for very indecent Expreſſions concerning the Myſteries of Chriſtianity: That he had alſo been proſecuted for Perjury; and being Chaplain to a Man of War, was diſmiſſed upon Complaint of ſome unnatural Practices not to be named: Being admitted afterwards Chaplain to the Duke of *Norfolk*, and diſcovering an Inclination to Popery, *Hutchinſon*, a Jeſuit of that Family, had the Honour of his Converſion, who being very intimate with the Biſhop, told him, that *Oates* and the Jeſuits were always in ill Terms; and they allowing him but Ninepence a Day, *Hutchinſon* often relieved him: That the Jeſuits, wanting to get rid of *Oates*, ſent him beyond Sea, which made it unlikely he ſhould be truſted with their Secrets.

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That the Biſhop talking with *Oates* about the Plot, *Oates* broke out into a mighty Rage againſt the Jeſuits, ſaying, *he would have their Blood*; and it being demanded of him, what it was prevailed on him to change his Religion and turn Papiſt, *Oates* ſtood up, and laying his Hand upon his Breaſt, ſaid, *God and his holy Angels knew he never changed, but went amongſt them on purpoſe to betray them*; which gave the Biſhop ſuch a Character of the Man, that he never afterwards had any Regard to what he ſaid or ſwore.

As to *Bedloe*, the Biſhop ſays, at his firſt Examination before the Secretary of State in his Majeſty's Preſence, he declared he knew nothing of the Plot; but being examined at the Bar of the Houſe of Lords the next Day, he pretended, of his own Knowledge, to make a full Diſcovery of the Plot, and to confirm *Oates*'s Teſtimony, which convinced the King, that ſome body had practiſed upon him ſince his Examination before the Secretary, and inſtructed him what to ſay: The Biſhop adds, that *Bedloe* had led a very vicious Life, and gone by falſe Names, whereby he had cheated ſeveral People; that he had alſo perſonated a Man of Quality in *France* and *Spain*, where he lived by Cheating; ſo that he could not think he made this Diſcovery out of Conſcience, as he gave out.

On the other Hand, I do not find any thing objected to the Character of *Knox* before this Trial; and all that he ſeems to be convicted of here, was an honeſt Zeal to ſerve his Maſter, and the reſt of the Lords that were falſely accuſed.

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Trials of Anderſon, *&c.*

The Trials of LIONEL ANDERSON, WILLIAM RUSSEL, CHARLES PARIS, HENRY STARKEY, JAMES CORKER, WILLIAM MARSHAL, and ALEXANDER LUMSDEN, Popiſh Prieſts, at the *Old-Baily, London*, on the 17th of *January*, 1679. 31 *Car.* II.

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The Charge. THE Indictment charges them with High-Treaſon, in remaining in *England* after having taken Popiſh Orders, contrary to the Statute of 27 *Eliz.*

To which they all pleaded *Not Guilty*, except *Corker* and *Marſhal*, who objected, that they ought not to be arraigned for High-Treaſon again, becauſe they had already been tried for High-Treaſon and acquitted; but the Court told them, the former Trial was for being in a Plot againſt the King and Government; and this Indictment was, for remaining in *England* after they had accepted Popiſh Orders; whereupon they pleaded *Not Guilty*, as the reſt had done.

The Priſoners making no Challenges to the Jurors, the firſt twelve in the Panel were ſworn.

Then Mr. *Anderſon* ſaid, as to the Crime of remaining in *England*, with which he was charged, he ſtaid here by the King's expreſs Command, and had an Order for it from the Council-Board: To which the Court anſwered, if he had ſuch an Order, he muſt apply himſelf elſe where; their Buſineſs here was to try him on the Statute on which he was indicted.

Anderſon *pleads, he ſtaid in* England, *by the King's Order.*

The King's Counſel proceeding to open the Indictment, obſerved, that this Statute, on which the Priſoners were indicted, had been

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None condemned on this Statute, till the Popiſh Plot, and now revived on Account of the Practices of the Prieſts againſt the Government.

been made above an hundred Years; but that thro' the Lenity of our Princes, it had lain dormant till this Time; and that the Reaſon of reviving it now, was the Practices of the Popiſh Prieſts to ſeduce the People, and incite Rebellions againſt the Government, which firſt gave Occaſion to the making of it, and at preſent made this Proſecution neceſſary: That it was not purely for being Prieſts they were indicted, but for remaining in *England* after they had received Popiſh Orders, acknowledging foreign Authority, and rejecting that of their Sovereign.

Dangerfield's *incredible Evidence.*

The Witneſſes being called, *Dangerfield* depoſed, that being a Priſoner for Debt in the *King*'s-*Bench*, in *May* or *June* laſt, he went to Confeſſion to the Priſoner *Anderſon*; and having received Abſolution from him, *Anderſon* ſent him to another Prieſt that was ſaying Maſs, to receive the Sacrament; after which he returned to *Anderſon* again, who gave him a Toleration to go and be drunk with one *Stroud*: For the Deponent was employed by the Catholicks to endeavour to bring over *Stroud* to be a Witneſs for the Lords in the *Tower*, and to invalidate *Bedloe's* Teſtimony; and the Deponent demanding of *Anderſon*, if he might lawfully get drunk juſt after receiving the Sacrament? *Anderſon* replied Yes; he gave him Authority to do ſo, it being for the good of the Cauſe.

Anderſon thereupon ſaid, here I am upon my Life and Death, and I wiſh that all the Puniſhments of Hell and Damnation may come upon me, if ever I opened my Mouth to this Rogue about any ſuch Buſineſs.

Anderſon *objects, that he is not a credible Witneſs.*

The Court told him, they muſt not ſuffer ſuch Language; to which *Anderſon* replied, if *Dangerfield* and he were ſo well acquainted, ſome body muſt have ſeen them talk together one time or other; and if he could produce one Perſon that would teſtify he ever ſaw him ſpeak to this Witneſs, he would be hanged, and ſay no more: That Witneſſes ought to be creditable People; and this Man had been pilloried twice, broke Priſon once, and committed many heinous Offences; and that his Teſtimony againſt Colonel *Manſel*, whoſe Blood that Villain deſigned to have ſhed, was not admitted, upon that Account.

But the Court told *Anderſon* this would not avail him, unleſs he could produce the Record of his Conviction: Then *Titus Oates* was produced as a Witneſs, who depoſed, that *Anderſon* was a Prieſt, and he had heard him ſay Maſs.

His further Defence.

Whereupon the Priſoner acknowledged he had ſaid Maſs, but ſaid that was no Proof of his being a Prieſt; and that the Law made a Difference, and only ſet a pecuniary Penalty of 200 Marks, and a Year's Impriſonment upon one that ſaid Maſs; and there was no Proof of his receiving Orders from the See of *Rome*.

The Chief Juſtice replied, if this Statute could never have any Effect, or a Prieſt be convicted on it, unleſs they could produce Witneſſes that ſaw him take Orders, then indeed he might avoid the Statute: But when it was plainly proved, that he had done thoſe Acts which none but Prieſts were allowed to do, it muſt convince all the World that this Iſſue whether he was a Prieſt or not, was well proved. 1679. 31 Car. II.

Anderſon demanded, if they could prove him to be an *Engliſhman*? *Oates* anſwered, he had heard the Priſoner ſay he was an *Engliſhman*, and the Son of an *Engliſh* Gentleman. And *Bedloe* appeared, and depoſed, that he was a Prieſt, and an *Engliſhman*, Son of Mr. *Anderſon*, a Gentleman of two or three hundred Pounds *per Annum* in *Oxfordſhire*; he knew his Father very well: *Anderſon* replied, was I guilty of being acquainted with ſo great a Rogue as this Fellow, I would have been my own Executioner, and not have expected my Sentence here: My Father has the Honour to be well known to my Lord Chief Baron, who knows this to be falſe. *Bedloe proved perjured in Court.*

Whereupon the Lord Chief Baron ſaid, Mr. *Anderſon* was the Son of a Gentleman of Quality in *Lincolnſhire*.

And yet, ſays *Anderſon*, this Rogue can ſay this upon Oath; but indeed his whole Life has been full of ſuch Miſtakes.

Prance then depoſed, he had heard the Priſoner ſay Maſs at *Wild-Houſe* ſeveral Times.

Anderſon's *Defence continued.*

Anderſon anſwered, he could prove he never ſaid Maſs at *Wild-Houſe*; for ſome of thoſe Fathers would have had him excommunicated, for writing for the King's Temporal Juriſdiction over all his Subjects, independant of the Pope, as appeared by a Letter from the Biſhop of *London* on his Behalf. He was known, he ſaid, to moſt of the dignified Clergy in *England*, and would not deny his having ſaid Maſs; but he had not ſaid Maſs in any Popiſh Chappel theſe ten Years: He would not tell a Lye to ſave his Life, or to take away the Life of the greateſt Villain upon Earth; no, not of that Rogue *(pointing to Dangerfield)*; but I proteſt, my Lord (ſaid he) there is not one Word that has been ſworn againſt me true, unleſs what *Oates* depoſed concerning my ſaying Maſs; and I can prove to your Lordſhip by Authority, that it was the Opinion of all the Judges, about nine Years ago, delivered to the King and Council, that this Law was only made *in terrorem*.

He urges, this Law was made only in terrorem.

The Court anſwered, he muſt not be permitted to talk thus; would he arraign the Judges? 'Twas true, the Statute had not been rigorouſly put in Execution, till they themſelves gave Occaſion for it: But now it appeared neceſſary for the Preſervation of the King's Life, againſt which there were ſuch Conſpiracies.

Requires ſtrict Proof of the Facts.

Then *Anderſon* deſired three Things might be proved: Firſt, that he was an *Engliſhman*; Secondly, that he took Orders from *Rome*; and thirdly, that he did abide in *England* contrary to the Statute; for this being a Penal Law, the Facts ought to be proved poſitively, and the Perſon accuſed was not to be *preſumed* guilty from Circumſtances.

The Court anſwered, The Firſt he had proved himſelf, by appealing to the Chief Baron; and the Second, his being a Prieſt, he had acknowledged.

urges his Loyalty.

Then *Anderſon* deſired that they would ſtop Proceedings till they knew the King's Pleaſure;

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ſure; for he had given ſeveral Teſtimonies of his Loyalty and Obedience to the Government: But the Court told him, the Jury muſt now try the Fact, and declared that the Proof was abundantly ſufficient to convict him.

Corker's Trial.

Mr. *Corker* being brought upon his Trial, *Oates*, *Bedloe*, and *Prance*, all depoſed, they had heard him ſay Maſs, and perform other Parts of his Function.

To which *Corker* only anſwered, he had not ſaid Maſs at ſome of the Places the Witneſſes mentioned.

Marſhal's Trial.

Then Mr. *Marſhal* was ſet to the Bar, and there being but one Witneſs of his being a Prieſt, Witneſſes were called, to prove he acknowledged himſelf a Prieſt in Court, at his Trial for the Plot; which the Court obſerved was very hard, and ſuch Teſtimony as ought not to have been made uſe of.

Marſhal inſiſted that *Oates*'s Teſtimony being found falſe at his former Trial, he ought not to be credited now; but he was anſwered, a Witneſs might ſwear true, though the Jury did not believe him.

Ruſſel's Trial.

Mr. *Ruſſel* being brought to the Bar, and proved to be a Prieſt by three Witneſſes, did not offer any thing in his Defence; whereupon

Paris's Trial.

Charles Paris was brought upon his Trial, and *Prance* teſtifying he had heard him ſay Maſs two Years, or two Years and a half before. The Priſoner deſired the Witneſs might be poſitive as to the Time, or it would be impoſſible to diſprove him; but the Court anſwered, a Man could not be poſitive as to the Time; however, he produced Witneſſes to prove he was at *Windſor* about the Time the Witneſſes ſwore he was in Town, and deſired he might give the *Venetian* Ambaſſador's Letter in Evidence, who teſtified he had never officiated in his Family; but *Paris* was told this was no Evidence.

A Letter not allowed to be given in Evidence.

Starkey's Trial.

Then Mr. *Starkey* was brought to the Bar; and *Oates* depoſed, that he heard him ſay Maſs about three Years before, conſecrate the Hoſt, and receive the Sacrament in both Kinds, in a Prieſt's Habit; and *Starkey* demanding of this Witneſs, what a Prieſt's Habit was? *Oates* anſwered, he had a Thing about his Neck, and a Surplice, and a Thing about his Arm; the Surplice was girt about him.

Starkey replied, that *Oates* neither knew a Prieſt's Habit, nor the Difference between Habits and Ornaments; that his Habit was a Caſſock down to the Ground, and a Side Cloak; that his Ornaments were not a Surplice, but an Albe that falls to the Ground, with other Things beſides: He inſiſted that there was no Proof of his taking Orders, and if he was not in Orders, it could be no Maſs; for it was the Prieſt that made the Maſs, and not the Maſs the Prieſt; and he had known a Lay-Man, a Proteſtant, ſay Maſs about *London*, and at laſt ſtole the Chalice; his Name was *Gardener*.

Then *Prance* depoſed, he had heard *Starkey* ſay Maſs at ſeveral Places, and heard him ſay, he had ſaid Maſs in the late King's Army.

Starkey anſwered, he never did; but he appeared for the King, when he had not above five hundred Men in Appearance for him; had ſpent above four thouſand Pounds in the King's Service, and loſt a Leg by a Cannon Shot; and when he was baniſhed, had but three half Crowns left in the World.

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Starkey urges his Services for the Crown.

The Court replied, whatever he had merited by his Service, he had beſt apply to the King for Mercy; but the Jury could take no Notice of it.

Starkey ſaid, he was baniſhed by the Uſurpers into *France* fourteen Years, becauſe he refuſed to take the Engagement never to bear Arms for the King; and he had diſcovered a Plot againſt the King's Life.

The Court anſwered, they were only to try whether he was a Prieſt or not; and told the Jury, there were two Witneſſes of it, and if they believed them, they ought to find him guilty.

Lumſden's Trial.

Alexander Lumſden being brought upon his Trial, it was proved, by three Witneſſes, he had exercis'd the Prieſt's Function: To which he objected, that this was no Proof of his being a Prieſt; but the Chief Baron, in his Directions to the Jury, told them, there was no Neceſſity they ſhould have Proof of a Prieſt's Ordination; but if it was proved he had exerciſed the Office of a Prieſt, it was ſufficient Evidence to convict him; but that Mr. *Lumſden*'s Caſe differed from the reſt: As he was a *Scotchman*, the Court were in Doubt whether he was within the Statute; for the Words being *within the King*'s *Dominions*, they queſtioned whether they extended to a Native of *Scotland*, which was not under the Dominion of the King of *England* at the Time of making that Statute; and therefore they directed the Jury to find a ſpecial Verdict as to him.

Doubted if the Statute affected him, being a Scotchman.

The firſt ſix convicted.

A ſpecial Verdict as to Lumſden.

The Jury, after a ſhort Receſs, brought in the firſt ſix Priſoners GUILTY; and as to *Lumſden*, they found that he was a Prieſt, and that he was remaining in *England*, as the Indictment charged; but that he was born at *Aberdeen* in *Scotland*, and whether he was guilty of *High-Treaſon*, they left to the Determination of the Court.

The Recorder's Speech before Judgment.

All the Priſoners (except *Lumſden*) being brought to the Bar again to hear their Sentence, and having nothing more to offer againſt pronouncing Judgment, than they had already urged at their Trials, the Recorder made a Speech on the Occaſion; wherein he obſerved, that neither the Law on which they were convicted, nor the putting it in Execution at this time, were unreaſonable: That the King ought to be acknowledged Supreme Head and Governor in his Dominions; and ſuch Perſons as were for transferring their Allegiance to a Foreigner, and giving him a Power to depoſe the King, and diſpoſe of his Dominions, as every one did who accepted Orders from the See of *Rome*, muſt be thought to deſerve the greateſt Puniſhment; and if Care was not taken of thoſe who profeſſed ſuch Principles, and preached ſuch Doctrines, they ſhould ſoon ſee an End of their Government and Religion too; and ſince they were now endeavouring to put theſe Doctrines in Practice there could be no Reaſon alledged, but as the

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Six condemned as Traitors; but reprieved.

Occaſion of making the Law was revived, ſo the Execution of the Law ſhould revive with it: After which the uſual Sentence in high Treaſon was pronounced; but they were reprieved from Time to Time, and never executed.

Remarks on Anderſon's *Trial.*

The King's Counſel ſeem to admit, that this Law, making it high Treaſon for an *Engliſh* Popiſh Prieſt to remain in the King's Dominions, was never put in Execution, till the pretended Popiſh Plot; when it was taken for granted that all ſuch Prieſts were in a Conſpiracy, with the reſt of the Papiſts to murder his Majeſty, and to ſubvert our Religion and Government; and we find three or four PopiſhPrieſts were actually executed, on the Borders of *Wales*, ſome few Weeks before, on this general Surmiſe without anyProof of their being in a Plot againſt the Government, though it was not thought fit to execute theſe, who were condemned in the Capital City; not only becauſe their Loyalty was conſpicuous to all the World, but leſt the Catholick Powers ſhould be alarmed at it, and retaliate it on the Proteſtant Clergy abroad.

Indeed the King and the Adminiſtration were always averſe to theſe rigorous Proceedings againſt the Papiſts, *purely for their Religion*; but were puſhed upon it by the Faction, that they might have a Handle to charge the Government itſelf, with favouring Popery, if they refuſed to let theſe ſanguinary Laws, that were made only *in terrorem* be put in Execution: But when they proceeded to accuſe Men of the moſt approved Loyalty, who had loſt their Fortunes in the Royal Cauſe, been plundered, wounded and baniſhed, for adhering to the King and Royal Family, it was thought high Time to put a Stop their Rage; and though by their Clamours they prevailed to have theſe Gentlemen brought upon their Trials, yet, when their Loyalty appeared ſo eminently in the Defence they made, it convinced all Men of Senſe and Impartiality, that they ought to have met with better Treatment: It is obvious, that the greateſt Reaſon the Faction were prejudiced againſt them was their conſpicuous Loyalty: It was not becauſe they conſpired againſt the King's Life, but becauſe they had contributed ſo nobly to the Support of the Monarchy, when their rebellious Fore-Fathers attacked and overturned it, that they would have ſacrificed them. 1679. 31 Car. II.

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Tasborough and Price *their Trial.*

The Trial of JOHN TASBOROUGH. Gent. and ANNE PRICE, Spinſter, for *Subornation of Perjury*, at the *King's-Bench* Bar, the Third of *Feb.* 1679. *Hil.* 32 *Car.* II.

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The Charge.

THE Indictment recites, that *Whitebread*, *Harcourt*, *Langhorn*, and others had been convicted and attainted of *High-Treaſon* in conſpiring the Death of the King, and that *Dugdale* was a Witneſs againſt them: That the Defendants, intending to ſtifle the Diſcovery of the ſaid Treaſons, did, before the Trial of the ſaid *Harcourt*, ſuborn and endeavour to perſuade the ſaid *Dugdale* not to be a Witneſs at the ſaid Trial; and after the Trial, did ſuborn and ſolicite the ſaid *Dugdale* to retract and deny his Evidence, and promiſed him large Sums of Money to induce him ſo to do; adviſed him to withdraw himſelf, and importuned him to ſign a Note, importing, *That he had ſworn falſely againſt the* Catholicks, *and that, knowing he had many powerful Enemies, he had withdrawn himſelf to a Place of Safety, in order to make a full Diſcovery*, &c. And to prevail on him to ſign the ſaid Note, promiſed him many great Rewards.

The Witneſſes being called,

Dugdale's Evidence.

Stephen Dugdale depoſed, that the Defendant, Mrs. *Price*, having been a Servant with him in the Lord *Aſton*'s Family, when he came up to *London* to be a Witneſs for the King, he ſent for her, and they uſed to converſe much together; and that, in *June* laſt, the Night before *Harcourt*'s Trial, ſhe would have perſuaded him not to give Evidence againſt *Harcourt*, becauſe he was her ghoſtly Father; but the Deponent anſwered, he could not help it; and he did not ſee her again a pretty while: However, ſhe was afterwards reconciled to him, and came to him again in *September* laſt, telling him, ſhe came from a great Perſon, and if he would retract his Evidence, and go to *Flanders*, he ſhould have a thouſand Pounds ſecured to him in a Merchant's Hands, which he ſhould receive when he returned to give Evidence for them; telling him he muſt take the Plot off the Catholicks, and throw it on the Proteſtants: That the next time ſhe came, he demanded of her who was the great Perſon ſhe came from; and ſhe telling him from the Duke of *York*, the Deponent immediately went to the Lord *Shaftesbury* and Mr. *Hampden*, and acquainted them with it; and that they directed him to go on a little farther, and trepan her, that they might diſcover the whole Deſign; and accordingly he gave her Encouragement, and got Dr. *Chamberlain* and his Clerk concealed in a Place where they might hear his Diſcourſe with Mrs. *Price*; after which he asked Mrs. *Price*, who firſt propoſed this Matter? and ſhe anſwered, ſhe did.

That *Tasborough*, the other Defendant, came firſt to the Deponent in *October* laſt, and ſaid, Mrs. *Price* acquainted him he would come over to them, and he gave *Tasborough* Encouragement to believe ſo; whereupon *Tasborough* ſaid, he was come from the Duke, to confirm what Mrs. *Price* had promiſed, and it ſhould certainly be made good, and he ſhould have the Duke's Protection: That, if he did come over to them, it would be a very charitable Act, and like a Chriſtian; and if he had done amiſs, he might have a Pardon for it: That they produced the Note mentioned in the Indictment, for him to ſign; and

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and *Tasborough* ſaid, it was nothing but what he might lawfully do; and, upon the Deponent's Importunity, Mrs. *Price* left the Note with him, and he gave it to Dr. *Chamberlain* to copy.

That he afterwards met Mr. *Tasborough* and Mrs. *Price* at the *Six Cannes* in *Holbourn*, and they told him, that it was the laſt time they would meet him, if he did not then ſign the Note; that his Refuſal would be much to his Prejudice, and they ſhould not be able to do any Thing for him, unleſs he ſigned it before the Duke went to *Scotland*: And that, once before this, Mrs. *Price* pretended to go to *Windſor* about the Buſineſs, and get his Pardon, telling him the Duke would protect him: That *Tasborough* directed him alſo to apply to the *Spaniſh* Ambaſſador, and he would write Letters to *Flanders* in Behalf of the Deponent; but he could never find the Duke countenanced the Matter, or knew of it, though they uſed his Name. He depoſed farther, that they told him, before the Duke would believe him real, he muſt ſubſcribe to the Note: That the thouſand Pounds were prepared for him; he ſhould go to *Flanders*, and be maintained and protected there; and objecting his Fears of the Inquiſition, if he went to *Flanders*, Mrs. *Price* asked him, if he could not be content to be in a Proteſtant Earl's Houſe, and not go beyond Sea.

That diſcourſing once with *Tasborough* about Sir *George Wakeman*'s Trial, he obſerved what a Progreſs had been made, by acquitting Sir *George*: The Proteſtants themſelves were now at a Stand, he ſaid, *Whether there was a Plot or not*; adding, if you come over to us, it will overthrow all; as for *Oates*, *Bedloe*, and *Prance*, they ſhould ſoon do their Buſineſs.

Then a Copy of the Note mentioned in the Indictment was produced, and proved to be a true Copy.

Wright's *Evidence.*

------ *Wright*, being ſworn, depoſed, that he heard Mrs. *Price* deſire *Dugdale* to be kind to Father *Harcourt*; and another Time he heard her ſay, ſhe had been to viſit *Harcourt*, who took her in his Arms, and ſaid, do not cry for me, I die in a good Cauſe; and ſhe added, if the King commanded her to be burnt at a Stake, ſhe would ſubmit to it, and ſo would the whole Party; whereupon *Dugdale* ſaid, while you uſe theſe kind Expreſſions, you would cut off his Head; and Mrs. *Price* replied, you are a Rogue, I am ſatisfied; and often ſaid, there were not four greater Rogues on this Side Hell than the King's Evidence, *(Oates*, *Bedloe*, *Prance* and *Dugdale.)*

The Chief Juſtice obſerving, it was ſtrange ſhe ſhould tamper with him after ſhe had called him Rogue, the King's Counſel anſwered, who ſhould ſhe tamper with, but one ſhe thought a Rogue?

Croſs's *Evidence.*

Croſs, the Vintner, depoſed, That Mrs. *Price* came often to his Houſe, in *June* and *July* laſt, and uſed to ſend for *Dugdale*; and he heard them diſcourſe concerning *Harcourt*, but did not know what it tended to.

Chamberlain's *Evidence.*

Then *Chamberlain* and *Cleave* his Clerk were ſworn, who lay concealed in *Dugdale*'s Chamber while he converſed with Mrs. *Price*, and depoſed that they heard her tell *Dugdale*, the *Spaniſh* Ambaſſador was unwilling to treat with him, becauſe his Interpreter was out of Town, and it would be dangerous to truſt another; but that the Duke of *York* would protect him, and pardon him, and give him a thouſand Pounds to maintain him; and *Dugdale* ſaid, you know, Mrs. *Price*, that I did not begin this Intrigue, but you propoſed it to me; and ſhe owned ſhe propoſed it.

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Sir *Robert Southwell*, Clerk of the Council, being ſworn, depoſed, that Mrs. *Price* was examined before the Council the 23d of *October*, and it being demanded who framed the aboveſaid Paper, ſhe anſwered, ſhe indicted it herſelf, and one Mrs. *Man* wrote it out for her: And that Mr. *Tasborough* being examined alſo, acknowledged he told *Dugdale*, that unleſs he ſigned it, he could procure him no Favour; for that was to be the Foundation, to teſtify that he was a Man of that Sorrow he had expreſſed himſelf to Mrs. *Price*.

Clerk of the Council's Evidence.

Then Mr. *Sanders*, Counſel for Mrs. *Price*, entered upon her Defence, and ſaid, It was true Mr. *Dugdale* and Mrs. *Price* were Fellow-Servants in the Lord *Aſton*'s Family, and *Dugdale* had promiſed her Marriage, though he thought fit afterwards to deſert her: That upon his coming to *London*, he renewed his Courtſhip; and it was not unlikely, as ſhe was a Papiſt, ſhe might ſolicit a Man ſhe had an Intereſt in for her Party; but it was probable, the Story of ſuborning him was framed by *Dugdale* himſelf, which was baſely done by one with whom he had contracted Marriage.

Mrs. Price's Defence by her Counſel.

The Chief Juſtice ſaid, It was much they ſhould be contracted, when ſhe told him he was a great Rogue.

Mr. *Sanders* anſwered, He deſired it might be obſerved, that it was after ſhe had told him he was a Rogue that he pretended ſhe had ſuborned him.

Mr. Juſtice *Pemberton* replied, And therefore ſhe thought him fitter for her Purpoſe.

To which Mr. *Sanders* anſwered, If ſhe had an Intent to ſuborn him, ſhe would not have called him Rogue to his Face; that was not the Way to inſinuate herſelf.

The Priſoner's Witneſſes.

Then Sir *John Nicholas* depoſed, that *Dugdale* acknowledged before the Council, he had made ſome Propoſals of Marriage to Mrs. *Price*, but ſaid there was no Contract.

Other Witneſſes depoſed, that *Dugdale* courted and kept Company with Mrs. *Price* after he came up to Town: Upon which her Counſel obſerved, that ſhe kept him Company on that Account, and not with an Intent to ſuborn him to retract his Evidence. To which the Court replied, Why did you write that Note then?

Tasborough's *Defence by his Counſel.*

Mr. *Pollexfen*, Counſel for Mr. *Tasborough*, ſaid, that, notwithſtanding any Evidence that had been given, his Client might be very innocent; for it appeared Mrs. *Price* told him, that *Dugdale* was ſorry for what he had ſworn, and would retract his Evidence; and *Dugdale* himſelf ſaid, he ſeemed to comply, and treated as if he was yielding.

Mr.

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Mr. Juſtice *Pemberton* thereupon obſerved, that *Tasborough* ſaid, Mrs. *Price* acquainted him with the Propoſal ſhe had made of a thouſand Pounds, and he was the Man that was to confirm the Promiſes ſhe had made.

The Chief Juſtice alſo obſerved, That *Tasborough* told *Dugdale*, if he would retract his Evidence, according to the Note that was produced, he ſhould have a thouſand Pounds for his Pains: And it was obſerved, that *Tasborough* uſed the Duke of *York*'s Name, and ſaid he had Authority from him to propoſe thoſe Things, which was a Wrong done to ſo great a Prince.

The Counſel replied, that as *Dugdale* apprehended he ſhould make himſelf a great many Enemies, and might want a Subſiſtence if he complied with them, *Tasborough* might ſay, very innocently, he ſhould be protected, and have a Proviſion made for him, if he deſerved it: There was a great deal of Difference, between offering a Man Money to ſwear a Falſhood, and retract the Truth, and offering him Money to bring Truth to Light, and retract a Falſhood; and it was lawful to promiſe a Witneſs Protection and Aſſiſtance.

The Chief Juſtice ſaid, A thouſand Pounds Reward was too great a Temptation: They did not live in ſo virtuous an Age, but a Man might be tempted, by ſuch a Promiſe, to retract his Evidence, though it was true: By this they would let in all Manner of Temptations to Witneſſes; they ſhould never know where they were,

Mr. *Thompſon*, Counſel for Mr. *Tasborough*, urged, that he was a Gentleman of a fair Character, and not likely to be concerned in ſuch an Affair, as *Dugdale* would repreſent this to be, (namely, the ſuborning him to retract his Evidence, without any Regard whether it was true or falſe;) and that Mr. *Tasborough* had applied himſelf to the Lord Privy Seal, upon Mrs. *Price*'s giving him this Information, that Mr. *Dugdale* might receive ſuch Encouragement as was fitting in this Matter.

Then Mrs. *Price* having obtained Leave to ſpeak for herſelf, ſaid, that *Dugdale* importuned her to go to the Duke of *York*, and promiſed to pay her Coach-Hire; for the Truth of which ſhe appealed to *Dugdale* himſelf; but was told by Mr. Juſtice *Pemberton*, ſhe muſt not interrogate him.

Mrs. *Price* then averred, that *Dugdale* himſelf ſolicited her to draw the Note mentioned in the Indictment; and appealed to *Dugdale*, if he did not acknowledge to her, that he was perjured: Whereupon the Court told her, ſhe was an impudent Woman, ſhe muſt have her Mouth ſtopped, and would not ſuffer her to ſay any more. And Mr. Juſtice *Jones* proceeding to ſum up the Evidence, obſerved to the Jury, that the Familiarity which had been proved between *Dugdale* and Mrs. *Price*, was rather an Argument of her tampering with him, than the contrary; for it was not uſual to attempt ſuch Things with Strangers; and he thought both Parts of the Indictment well proved as to her, as well the perſuading *Dugdale* not to give Evidence againſt *Harcourt*, as the ſuborning him to retract his Evidence afterwards: *Tasborough* indeed was not concerned in the firſt Part, but in the ſuborning *Dugdale* to retract his Evidence, he was equally guilty; for he did not, as had been ſuggeſted, charge *Dugdale* with giving a falſe Evidence againſt his Conſcience, but only adviſed him to keep out of the Way, and retract his Evidence againſt the Catholicks, and he ſhould have a thouſand Pounds, a Pardon, and Protection; and though it might be a very good Thing, to adviſe one who had done an Injury to Repentance and Recantation, yet the offering him a Reward of a thouſand Pounds could never be juſtified: That this was the uſual Way of ſuborning People; no Man ever came to another, and deſired him directly to forſwear himſelf; but the telling him of a thouſand Pounds Reward, and how he might ſerve the Catholick Cauſe, were very proper Arguments in this Caſe to prevail with him, and ſuch as few People in his Circumſtances would have reſiſted; and though *Tasborough* might have the Character of an honeſt Man, it was not to be doubted he had been taught, that in the Service of the Catholick Cauſe, all ſuch Practices would be be ſanctified,

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After which the Jury laid their Heads together, and found both the Defendants guilty without going from the Bar; and being committed to the Marſhal of the *King's-Bench*, *Tasborough* was fined one hundred Pounds, and *Price* two hundred.

They are convicted.

Their Sentence.

It was the Unhappineſs of theſe Times, that no Man, charged with deſigning to ſtifle this pretended Plot, and tampering with the Witneſſes, could make a proper Defence: He durſt not ſo much as ſuggeſt that the Plot was a Forgery, and the Witneſſes perjured, for Fear of being charged as a Conſpirator, and drawing upon himſelf a Criminal Proſecution. And indeed, *Shaftesbury*, and the Faction, had worked up the People to ſuch a Fury, that a Man was in Danger of being pulled in Pieces, that dared to doubt of the Conſpiracy, or the Veracity of the Witneſſes, or to take any Notice of their infamous Characters.

Remarks on the Trial of Tasborough and Price.

It ſeems to be admitted on all Hands, that if the Plot was a Forgery, and the Witneſſes perjured, there was no Manner of Hurt in encouraging the Witneſſes to retract their Evidence, and make what Satisfaction they could to the Perſons they had injured by their Teſtimony; nay, this muſt be acknowledged by all Mankind to be their Duty, ſince it was done with a Deſign to prevent the ſpilling innocent Blood; and it is evident at this Day, to a Demonſtration, that the Plot was in reality a Sham, and the Witneſſes notoriouſly perjured: Even *Burnet* and *Rapin*, the celebrated Advocates of the Faction, have, both of them, been compelled by the Force of Truth, to confeſs thus much, however they may have endeavoured in ſome of their Works, to diſguiſe their real Thoughts, leaſt they ſhould incur the Diſpleaſure of their Party.

Rapin ſeems very ready to grant, there was no Deſign *againſt the King's Life*: On the contrary, like a true Diſciple of *Shaftesbury*'s, he

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he has formed another Plot, in which he makes the King and the Duke of *York* the principal Conſpirators. But if it be admitted there was *no Plot againſt the King's Life*, whatever Deſigns the King and Duke might have to ſubvert the eſtabliſhed Religion and Government, all thoſe who, were executed for the Plot, were certainly murdered under a Colour of Law; for it was a Conſpiracy againſt the King's Life they were charged with, and this is what they were condemned for: Beſides a Conſpiracy to aſſiſt the King, to bring about an Alteration in the eſtabliſhed Religion or Government, was not Treaſon by any Statute or Law then in being, and conſequently the Witneſſes were perjured, and the Sufferers unjuſtly put to death, though ſuch a Conſpiracy, as *Shaftesbury*, and after him *Rapin*, ſuppoſes, ſhould be admitted.

But whoever forged the Plot, it is evident, from the Narratives of *Tongue* and *Oates*, that the Original Deſign was to charge the Jeſuits, or rather the Pope, with a Deſign to murder both the King and Duke, to alter the very Frame of the Government, uſurp the Dominion of the Kingdom, and to govern it by a Viceroy or Lieutenant, as a Province of the See of *Rome*: And this is ſtill more apparent from the Commiſſions both for Civil and Military Offices, which *Oates* pretended were iſſued out at *Rome*, by an Authority derived from the Pope, or the General of the Jeſuits; and the Authority, he pretended, was given them, by thoſe Commiſſions, to depoſe and murder his Majeſty.

However, when *Shaftesbury* came into the Project, he perfectly new-modelled their Scheme; and inſtead of ſetting aſide the King and the Duke, he made them to be in a Plot with the Papiſts, and thoſe he called Popiſhly affected, againſt the Proteſtant Religion, and the Liberties of the People, in order to incite a Rebellion againſt King *Charles* II. as the Faction had done againſt K. *Charles* I. and they had infallibly brought the Son, as well as the Father, to the Block, if their Views had not been ſeen through before the Project was ripe: So that here was in reality a Plot of the Faction, and not of the Papiſts, to deſtroy the King and Government.

It can never be expected indeed, that the Sectaries, and their Adherents, ſhould entirely give up the Popiſh Plot, how full ſoever the Proof of the Forgery may be, becauſe they muſt then confeſs the Villainy of their Party in forging it, and in putting ſo many innocent Men to death, by hiring perjured Witneſſes to ſwear them out of their Lives, which muſt render their Party odious to all Mankind, and induce thoſe that wiſh well to the Government, to be upon their Guard whenever the Sectaries exclaim againſt Popery; a Stratagem they have formerly tried with ſuch Succeſs, that we find them repeating it in almoſt every Reign. But to return to the Trial:

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The Judge, who ſummed up the Evidence, ſeems to labour with all his Might to get the Defendants convicted, inſomuch that he ſcarce confines himſelf to Truth; for he ſays, *Tasborough* did not charge *Dugdale* with giving falſe Evidence, and therefore deſired him to retract it; but would have him retract it, right or wrong; whereas in the Note that was drawn up for *Dugdale* to ſign, it is expreſly ſaid, that *Dugdale* had ſworn falſly. Then the Judge obſerves, that the offering of a thouſand Pounds reward could never be juſtified; but if it be conſidered, that this was offered only to prevent the ſhedding innocent Blood, and that the Party offered as largely to get them convicted, when they knew the Priſoners innocent, the offering a thouſand Pounds to get the Witneſs to retract his murdering Evidence, might very well be juſtified; it would have been in vain to have offered leſs to a Man of Mr. *Dugdale*'s Honeſty, who was reſolved to make the moſt of the Parties that bid Money for his Evidence.

It was, indeed, enough to confound all Juſtice, and render it impoſſible almoſt to diſtinguiſh between Right and Wrong, if ſuch extravagant Rewards were offered to Witneſſes in ſuch mean Circumſtances, as the Judge rightly obſerved: But the Faction led the way and that in a very wicked Cauſe; and ſurely it was as lawful for innocent Men to endeavour to get the Evidence, falſly given againſt them, retracted, as it was for their Enemies to hire Witneſſes to take away their Lives.

Nor can I ſee why *Dugdale* ſhould not have been permitted to have made ſome Anſwer to Mrs. *Price*, when ſhe charged him to his Face in Court, and appealed to himſelf, *Whether he did not importune her to go with him to the Duke of* York? *And whether he did not acknowledge himſelf perjured?* If the Truth might have been brought to Light, by this or any other Means, it would have given more Satisfaction, than the adhering rigorouſly to Rules that have very little Reaſon to ſupport them:

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The Trial of BENJAMIN HARRIS, Bookſeller, for a *Miſdemeanor*, at *Guild-hall*, *London*, the 5th of *February*, 1679. 32 *Car.* II.

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Harris's Trial.

The Charge for publiſhing ſeditious Libel.

THE Defendant, by an Information exhibited by Mr. Attorney-General, was charged with publiſhing a Libel, entitled, *An Appeal from the Country to the City*; in which it was ſaid, That the greateſt Danger accruing to the Kingdom, upon the King's untimely Death, would proceed from a Confuſion, and Want of ſome eminent and intereſted Perſon they might truſt, to lead them up againſt a *French* and Popiſh Army; for which Purpoſe no Perſon was fitter than the Duke of *Monmouth*, as well for Quality, Courage, and Conduct, as for that his Life and Fortune depended on the ſame Bottom as theirs: He would ſtand by them, and therefore they ought to ſtand by him; and remember the old Rule, *He who has the worſt Title, ever makes the beſt King*; and inſtead of that Motto, *God and my Right*, he ought to take that of *God and my People*.

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The Evidence.

Three Witneſſes proved the Defendant's ſelling the Book; and a Fourth depoſed, that the Defendant was eſteemed an Anabaptiſt; and that when he was queſtioned by the Company of Stationers, for ſelling ſuch ſcandalous Books, he anſwered, he had ſeveral Thouſands to ſtand by him.

The Defence.

The Defendant's Counſel admitted he ſold the Book, but ſaid he did not do it maliciouſly: He ſaw the Book about Town, and bought a Parcel of them, hoping to get Money by them in his way of Trade; but had no Intention to ſcandalize the King or Government, and called two of his Neighbours to teſtify, he was a peaceable Man, and not uſed to ſpeak diſreſpectively of the Government.

The Charge of the Chief Juſtice.

The Chief Juſtice, in his Directions to the Jury, ſaid, that the expoſing this Libel to Sale was a great Offence; that it had been lately reſolved by all the Judges, that thoſe who printed or ſold ſcandalous Books or Pamphlets, reflecting on the publick, or on private Perſons, ſuch Books might be ſeiz'd, and the Offenders puniſhed by Law; and that all Writers of News, though not ſcandalous, ſeditious, or reflecting on the Government, if they wrote falſe News, were puniſhable: That the Book in Queſtion contained ſuch baſe Reflections againſt all ſorts of Perſons, he thought there could not be a worſe; or a worſe Man than the Defendant, who for a trivial Profit diſturbed the Peace of his Country, and would ſet the People together by the Ears for the Value of a Groat.

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The Jury finding the Defendant *Guilty of ſelling the Book*, the Chief Juſtice told them they muſt find him *Guilty*, or *Not Guilty*; whereupon they found him *Guilty* generally, and he was ſentenced to be ſet in the Pillory, to pay a Fine of 500 *l.* and to give Security for his good Behaviour for three Years.

He is convicted, and ſentenced.

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The Trial of FRANCIS SMITH, Bookſeller, for a *Miſdemeanor*, at *Guild-hall, London*, the 7th of *February*, 1679. 32 *Car.* II.

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Smith's Trial.

The Charge, for Publiſhing a Libel.

AN Information was exhibited againſt the Defendant by the Attorney-General charging him, that after the Trial of Sir *George Wakeman*, *Marſhal*, *Rumley*, and *Corker*, and their Acquittal before the Lord Mayor, the Lord Chief Juſtice *Scroggs*, *&c.* he had publiſhed a ſcandalous Libel entitled, *Some Obſervations on the late Trial*, reflecting on the Court, *&c.*

confeſſed.

The Information having been opened, and the Witneſſes called, the Defendant's Wife came into Court, and ſaid her Husband was ſick, or he would have come into Court, and made his Submiſſion in Perſon; whereupon his Council admitted the Record, and the Jury found him *Guilty*.

He afterwards ſubmitted to a ſmall Fine.

Jane Curtis alſo confeſſes her Offence.

JANE CURTIS, alſo being proſecuted for publiſhing the ſame Libel, came into Court, confeſſed her Offence, and made her Submiſſion; whereupon the Jury found her *Guilty*.

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The Trial of Sir THOMAS GASCOIGNE, Bart. for *High-Treaſon*, at the *King's-Bench* Barr, the 11th of *February*, 1679. 32 *Car.* II.

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Gaſcoigne's Trial.

The Indictment.

THE Indictment charges, that Sir *Thomas Gaſcoigne*, late of *Elmet* in the County of *York*, on the 30th of *May*, in the 31ſt Year of his preſent Majeſty, at *Elmet* aforeſaid, did compaſs and imagine the Death of the King, and the Subverſion of the Eſtabliſhed Religion and Government; and that the ſaid Sir *Thomas Gaſcoigne*, Sir *Miles Stapleton*, and other falſe Traitors, did, at the Time and Place aforeſaid, aſſemble themſelves, and reſolve to put the ſaid Treaſons in Execution, agreeing to contribute large Sums of Money to ſeveral of his Majeſty's Subjects, to procure them to kill him; and that they ſaid Sir *Thomas Gaſcoigne* did himſelf ſolicit *Robert Bolron*, and promiſed him for that Service 1000 *l.*

Some aſſigned to aſſiſt the Priſoner.

The Priſoner being fourſcore and four Years of Age, and very deaf, obtained leave for two of his Friends to ſtand by him and aſſiſt him at his Trial; but I do not perceive there was any one but Mr. *Hobart* an Attorney, that did him any Service.

The Evidence of Bolron, *the Priſoner's Servant.*

The Witneſſes being called, *Bolron*, lately a Servant to Sir *Thomas*, depoſed, that in 1674, he came to live with Sir *Thomas* as Steward to his Coal-works; and that a little before *Eaſter*, 1675, being in the next Room, he heard Sir *Thomas* tell Mr. *Charles Ingleby*, that leaſt his Eſtate ſhould be forfeited, he was reſolved to make a concluſive Conveyance thereof; and *Charles Ingleby* ſaid, he would draw the Conveyance: That the Defendant afterwards went with Sir *Thomas* to Sir *Wm. Ingleby*'s, and ſaw him Receive 1000 *l.* as the Conſideration Money (colourably;) that he heard the Deed read, and was Witneſs to the Execution of it; and it was a Conveyance of Sir *Thomas*'s whole Eſtate to Sir *Wm. Ingleby* for 7 Years, reſerving only 100 *l. per Ann.* beſides the Conſideration Money; and this he did (as the Deponent heard him tell Sir *Miles Stapleton*) to ſecure his Eſtate, in caſe he ſhould be diſcovered, to be in the Deſign of killing the King: That in the Year 1676, he heard Sir *Thomas* tell *Chriſtopher Metcalfe*, that he reſolved to ſend 3000 *l.* to the Jeſuits in *London*, for carrying on the Deſign; and Sir *Thomas* mentioned 300 *l.* for *Corker*, 300 *l.* for *Harcourt*, 300 *l.* for *Conwallis*, alias *Pracid*, and 300 *l.* to ſeveral other Perſons; and ſaid he would return 300 *l.* at a Time, by *Richard Phiſick*

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Phiſick, to prevent Suſpicion: That in 1677, he heard Sir *Thomas* ſay, he had returned it; and that, were it a thouſand Times as much, he ſhould be glad to ſpend it in ſo good a Cauſe; and at other Times, he heard him ſay, it was for killing the King: He further depoſed, that Sir *Thomas Gaſcoigne*, Sir *Miles Stapleton*, the Lady *Tempeſt*, *Thomas Thwing*, and ſeveral more, agreed to found a Nunnery at *Dolebank*, if their Deſign of killing the King took Effect, and the Roman Catholick Religion was eſtabliſhed in *England*; and Sir *Thomas* aſſigned 90 *l.* a Year out of his Eſtate towards endowing it.

Bolron added, that on the 30th of *May* laſt, Sir *Thomas* bid him go into a Gallery, and there *William Ruſhton*, his Confeſſor, came to him, and would have perſuaded him to kill the King, telling him how meritorious an Act it would be, and that the Pope would give the Kingdom to another: That returning to Sir *Thomas* again, and telling him what Diſcourſe he had with *Ruſhton*, Sir *Thomas* took him by the Hand, and ſaid, if the Deponent would engage in the Deſign of killing the King, he would give him 1000 *l.* and when he refuſed to be concerned in ſuch a wicked and bloody Deed, Sir *Thomas* deſired he would keep his Diſcourſe ſecret; but he went immediately to a Juſtice of Peace.

The Court demanding how ſoon he went? He ſaid he went within a Fortnight to Mr. *Tindal*, and made Oath that Sir *Thomas* offered him a 1000 *l.* to kill the King: That going afterwards to *London*, he applied himſelf to Sir *Robert Clayton*, who carried him to the Lord *Shaftesbury*, and an Order of Council was made concerning him.

It being demanded of him by the Court, If he left Sir *Thomas Gaſcoigne*'s Houſe in good Friendſhip? *Bolron* anſwered, Yes: He was often at his Houſe afterwards, and went thither to hear Maſs. It being demanded if he had any Eſtate when he left his Service? *Bolron* anſwered, he rented 15 *l. per Ann.* of Sir *Thomas*, and had 7 *l.* a Year of his own; and added, that he heard Sir *Thomas* tell the Lady *Tempeſt* he would ſend 150 *l.* to *Dolebank*, in hopes the Blow would be ſhortly given; and *Cornwallis* wrote Word he had received it, but ſaid it was too little to carry on ſo great a Deſign; for this was to arm the poor Catholicks when the King was killed.

The Priſoner's Anſwer to Bolron's Evidence.

Then Mr. *Hobart*, who was appointed to aſſiſt Sir *Thomas*, repeated Part of the Evidence to him; and Sir *Thomas* anſwered, He acknowledged he had Money of Sir *William Ingleby*, and ſealed a Deed to him, and that he had returned more than 3000 *l.* by *Phiſwick*, who was his Servant, for the Uſe of his Sons, Daughters, and other Relations; but averred, that what *Bolron* had atteſted concerning the founding a Nunnery, and the Deſign of killing the King, was abſolutely falſe: And particularly his offering *Bolron* 1000 *l.* to be one of the Aſſaſſins: And demanding if ever he knew him have 200 *l.* together in his Life? *Bolron* anſwered, he had ſeen 500 l. together in his Houſe, and 700 *l.* in Mr. *Phiſwick*'s Hands: That Sir *Thomas*'s Eſtate was then at leaſt 1200 *l. per Ann.* though he believed he had ſettled 600 *l. per Ann.* on his Son. Sir *Thomas* replied, he wiſhed *Bolron* would make it good; but there was not one Word of Truth in his Evidence: After which

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Mowbray's Evidence.

Mowbray, another of Sir *Thomas*'s Servants, was ſworn, and ſaid he would firſt give Evidence of the Plot in general (as the reſt of the Witneſſes were taught) and depoſed that he came to wait on Sir *Thomas* in his Chamber in 1674, and continued with him till 76, during which Time *Adamſon*, *Fincham*, *Stapleton* and *Killingbeck*, all Prieſts, and the two *Thwyngs* uſed to viſit Mr. *Ruſhton*; and the Deponent, being diligent in attending Sir *Thomas* at the Altar, was much in his Favour, and permitted to be in his Chamber when the Prieſts were in private with him, where he often heard them talk of a Deſign to advance the Popiſh Religion, and that it was like to be effected ſpeedily, ſince moſt of the conſiderable Papiſts were engaged in it; and if fair Means could not do it, Force muſt be uſed; for the King had promiſed the Jeſuits abroad to eſtabliſh their Religion when he was reſtored, which they deſpaired of now, and therefore he was adjudged an Heretick, and to be killed; and *Ruſhton* had given an Oath to Sir *Thomas*, his Son and Daughter, to conceal it, and be active in it: That at another Time *Ruſhton* produced a Liſt with 4 or 500 Names ſubſcribed to it, among which was Sir *Thomas Gaſcoigne*'s; the Title whereof was, *A Liſt of them that are engaged in the Deſign of killing the King, and promoting the Catholick Religion*; and they ſaid the Pope had given a Commiſſion to execute the Deſign, with a plenary Indulgence of Ten thouſand Years to all who ſhould either act, or contribute thereto; beſides other Gratifications.

That about *Michaelmas*, 1676, he heard Sir *Thomas*, his Son, the Lady *Tempeſt*, and Mr. *Ruſhton*, diſcourſing concerning killing the King, and firing the Cities of *London* and *York*; and Sir *Thomas* then aſſured *Ruſhton* he would obſerve the Oath of Secrecy, and contribute to the utmoſt of his Power to promote the Deſign; and they unanimouſly agreed it was a meritorious Undertaking, and ſaid they would venture their Lives and Fortunes in it: This he heard, as he ſtood without the Door of the Room.

The Priſoner's Anſwer to this Evidence.

Mr. *Hobart* having repeated this Evidence to Sir *Thomas*, he anſwered, this Witneſs had got his Story out of the News-Books: There was not a Word of Truth came out of his Mouth, and demanded why he did not diſcover this Matter ſooner? *Mowbray* ſaid, he was perſuaded to continue a Papiſt, that he might not diſcover it; and after he had taken the Oaths, and turned Proteſtant, they threatned to take away his Life; and his Circumſtances would not permit him to come to *London*.

Further Evidence.

Then Sir *Thomas*'s Almanack was produced as Evidence againſt him, wherein was mentioned 100 *l.* paid to *Peter* for *Corker*, which Sir *Thomas* ſaid was part of *Mary Appleby*'s Portion that he returned to *Corker*, becauſe he did not know where ſhe lived in *Paris*.

Mr.

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Mr. Attorney obſerved, There was another Book which mentioned 900 *l.* paid to *Corker*: To which Sir *Thomas* anſwered, he had been ſeveral Years returning Money: He was obliged to pay 100 *l.* annually to *Mary Appleby*, and ſeveral other Sums, as the Rents came in: They might amount to 2000 *l.* from firſt to laſt. And the Money he was charged with applying to erect a Nunnery, was for Mr. *Thwyng* and his Siſters, that lived next Door to him.

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Whereupon the Chief Juſtice obſerved, it was pretty plain there was a Nunnery deſigned.

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Sir *Thomas* being permitted to call his Witneſſes, *Babington* appeared and depoſed, that laſt Spring Sir *Thomas* gave him Orders to ſue *Bolron* on two Bonds: Whereupon *Bolron* offered to convey a Houſe at *Newcaſtle* to Sir *Thomas*, and a Conveyance was drawn, as a collateral Security for the Money; but *Bolron* refuſed to execute it, unleſs Sir *Thomas* would deliver up the two Bonds: That the Deponent alſo received Orders to deliver Declarations in Ejectment to turn *Bolron* out of his Farm, and telling *Bolron* of it, he ſaid, *Then, by God, I will do that which I did not intend to do*; and *Moor*, who was bound for *Bolron*, told the Deponent that *Bolron* declared, if Sir *Thomas* ſued him, he would inform that he kept Prieſts in his Houſe.

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Then the King's Council called Sir *John Nicholas*, Clerk of the Council, who depoſed, that Sir *Thomas* ſaid before the Council, *Bolron* was his Servant, till within this Twelvemonth; and for his Honeſty, he had nothing to ſay to him, 'till of late, that he had not behaved himſelf ſo well in giving an Information againſt him.

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The Judges direct the Jury againſt the Priſoner.

Then Mr. Juſtice *Jones* ſummed up the Evidence, and directed the Jury, to find the Priſoner guilty; as did Mr. Juſtice *Dolben*, and Mr. Juſtice *Pemberton*; and particularly, Mr. Juſtice *Dolben* told the Jury, he obſerved they took Notice how improbable it was, that Sir *Thomas Gaſcoigne* ſhould ſue *Bolron* upon the Bonds that were mentioned, and take a Courſe to turn him out of his Farm, at a Time when he knew *Bolron* was privy to his Conſpiracy; and when Sir *Thomas* himſelf had offered him a thouſand Pounds to kill the King: But he ſaid, they muſt give a Verdict according to their Evidence. And there being two Witneſſes who ſwore poſitively to a Thing within their own Knowledge, ſcarce any Improbability ought to weigh againſt Evidence: But notwithſtanding the Court labour-

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Sir Thomas *acquitted.*

Remarks on this Trial.

Thus we ſee new Witneſſes of the Plot riſing up every Day: If a Servant had cheated or robbed his Maſter, he would revenge himſelf, and endeavour to ward off a Proſecution, by ſwearing his Maſter into a Plot.

This was an expeditious Way of paying Debts, and getting a Protection againſt the Officers of Juſtice, which moſt of the Witneſſes of the Plot wanted; but when there were ſuch extravagant Rewards offered beſides for Witneſſes to ſupport the Credit of the Plot, no Wonder we find them multiply apace. The Chief Juſtice ſeems to have been ſufficiently convinced that the Priſoner was Innocent, and probably went off the Bench, that he might not incur the Diſpleaſure of the Faction, by declaring his Opinion on ſumming up the Evidence. The other three Judges were either ſtill deluded with the Belief of a Plot, or biaſſed by their Fears of the ſame Party, or they would not have borne ſo hard on the Priſoner, in their Directions to the Jury; particularly Mr. Juſtice *Dolbon*, who tells them they ought to believe the two Witneſſes, notwithſtanding the High Improbability of Sir *Thomas*'s giving Orders to ſue a Man, and turn him out of his Farm, after he had offered him 1000 *l.* to kill the King. Surely he ought to have taken Notice alſo, that the Witneſſes were not credible Witneſſes: That they were moved by Revenge, or Avarice, or that they gave this Evidence to ſave themſelves from a Jail; but in State Proſecutions it is very rare to find Judges perfectly indifferent: They are too often moved, either by Hopes or Fears, to ſhew great Partiality, and inſtead of being Counſel for the Priſoners, as they ſometimes have declared they ought to be, they wreſt both the Law and the Evidence to his Deſtruction: And where they do this, with an Intent to ſerve, or keep fair with a powerful Faction, or an arbitrary Adminiſtration, they ſeem to look upon ſuch Motives, as a ſufficient Juſtification of their Conduct to Men; but how they will be able to anſwer it to the Righteous Judge of all the Earth, poſſibly they ſeldom reflect.

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1680. 32 Car. II. Caſtlemaine's *Trial.*

The Trial of ROGER PALMER, Eſq; (Earl of *Caſtlemaine* in *Ireland*) for *High-Treaſon*, at the *King's-Bench* Bar, *June* 23d, 1680. *Trin.* 32 *Car.* II.

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The Charge. THE Indictment charges the Earl with High-Treaſon, in conſpiring the Death of the King, and the Subverſion of the eſtabliſhed Religion and Government; and in order thereto, promiſing great Rewards, and paying divers Sums of Money to ſeveral Perſons unknown, and writing Notes to incite ſeveral other Perſons to engage in the ſame traiterous Deſigns.

Mr. Attorney's Obſervations. Mr. Attorney, in opening the Evidence, obſerved, that the Lord *Caſtlemaine* was the Perſon who managed the Evidence for the Priſoners who had been tried for the Popiſh Plot, and was always preſent at thoſe Trials, and countenanced the Criminals, and afterwards became an Interceſſor for them.

Oates's *Evidence.* *Oates* depoſed, That he brought a Letter from the Fathers in *Spain* to the Earl of *Caſtlemaine*, whereby they informed him, that the Fathers there zealouſly concurred with the Fathers in *England* in the *Deſign*, namely, *The Subverſion of the Government, the Alteration of Religion, and the Deſtruction of the King.*

The Chief Juſtice demanding, If this was expreſſed in the Letter? *Oates* anſwered, The Word *Deſign* was; under which they uſed to comprehend all thoſe Things.

That he did not deliver this Letter to my Lord himſelf, but ſaw a Letter afterwards at *St. Omers*, wherein he acknowledged the Receipt of it: That he (the Deponent) afterwards came over from *St. Omers*, to the Conſult at the *White Horſe* in the *Strand*, and conſented with the reſt of the Jeſuits to the King's Death; and that my Lord *Caſtlemaine*, being ſome few Days after at *Wild-Houſe*, endeavoured to reconcile thoſe Fathers and the Jeſuits, that they might the better carry on the Deſign: That the Deponent did not know his Lordſhip then; but going over *Lincoln's-Inn-Fields* with Mr. *Langhorne* afterwards, and meeting his Lordſhip, Mr. *Langhorne* preſented the Deponent to him, and they went together to Mr. *Fenwicke*'s Chamber, where they diſcourſed of the Conſult, and how unanimous the Fathers were in ſigning it: They talked alſo of laying aſide the King, and bringing in the Popiſh Religion; and my Lord ſaid, He wiſhed them Succeſs, and *now he ſhould be revenged for the Injuries done him.*

The Chief Juſtice demanded, If they always meant the Death of the King, when they mentioned *The Deſign.*

Oates anſwered, It was ſo taken among them (the Jeſuits,) and ſo received by the Lord *Caſtlemaine.*

The Chief Juſtice asked, How he could ſay it was ſo received by his Lordſhip?

Oates anſwered, He had often in his Letters ſpoken of introducing the Popiſh Religion, and annexed it to the Word *Deſign.* Whereupon the Chief Juſtice replied, Then *Deſign* meant ſomething elſe beſides killing the King.

The Court demanded, When he firſt diſcovered the Lord *Caſtlemaine* was concerned in this Buſineſs? *Oates* anſwered, The laſt Seſſion of the Long Parliament: That he accuſed him *Trinity-Term* was Twelve-month, and he was committed; and when *Dangerfield* came in and accuſed my Lord, he (the Deponent) brought a Charge a ſecond Time againſt him.

Lord *Caſtlemaine* obſerved, when this Witneſs was before the King, he ſpoke of a Divorce.

The Attorney-General anſwered, What he ſaid in another Place, was not to be debated now.

His Lordſhip replied, If he proved him an ill Man in any Place, it was fit to be mentioned here; and demanded, If he ſaw the Divorce.

Oates ſaid, He would give Evidence of that, if his Lordſhip came to be indicted for his Prieſthood; but he did hear my Lord ſay at *Wild-houſe*, he had been at great Charge to carry on that Buſineſs of the Divorce: And a Letter was found, in a Prieſt's Chamber that was ſearched, wherein the whole Caſe was ſtated between him and his Wife *Barbara*; and he did tell the King, he ſaw in *Strange*'s Hand an Account of a Divorce between my Lord *Caſtlemaine* and *Barbara* Dutcheſs of *Cleveland.*

Mr. Attorney objected, That if the Priſoner might ask Queſtions about ſuch foreign Matters, any Man might be catched. The Chief Juſtice anſwered, This was not ſo remote, but Uſe might be made of it. And the Lord *Caſtlemaine* ſaid, How could a Man be catched in the Truth? And demanded of *Oates* again, Whether he ſaw a Divorce, and where; or whether he ſaid ſo?

Oates anſwered, He did not know whether he ſaid ſo or not; *and would have ſtolen away, but my Lord deſired he might ſtay in Court.*

Dangerfield's *Evidence.* Then *Dangerfield* was called as a Witneſs, to whoſe Teſtimony his Lordſhip objected, That he had been convicted of Felony; broke Priſon, and been outlawed upon it; that he was alſo ſtigmatiz'd, had ſtood in the Pillory, and been burnt in the Hand; and deſired his Counſel might be heard, as to his being a Witneſs: Whereupon Counſel was heard, and the Judges, being in Doubt, one of them went and conſulted the Judges of the *Common-Pleas*; after whoſe Return the Chief Juſtice ſaid, Mr. Juſtice *Raymond* had put the Caſe to the Judges of the *Common Pleas*, *(viz.)* That the Witneſs was convicted of Felony, had been burnt in the Hand, out-lawed for Felony, and had a General Pardon; and they were of Opinion, that a General Pardon would not reſtore him to be a Witneſs, after an Outlawry for Felony, becauſe of the Intereſt the Subject had in him; but where a Perſon was burnt in the Hand, they looked upon it as a more general Diſcharge than a Pardon

Objections made to his being a Witneſs.

The Earl's Witneſſes.

Records proving Dangerfield a common Cheat.

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Pardon, would amount to; and that, if he had been convicted of Felony, and not burnt in the Hand, a Pardon would not have ſet him right, but being convicted and burnt in the Hand, they ſuppoſed he might be a Witneſs.

Over-ruled.

Then *Dangerfield* was ſworn, and depoſed, That about a Year ago, the Lady *Powis* ſent him with a Letter to the Lord *Caſtlemaine*, and his Lordſhip ſent an Anſwer by him, which the Lady *Powis* read aloud to the Deponent and Mrs. *Cellier*, in which were theſe Words: *This Perſon I like very well, and though he be no Scholar, he will ſerve to inſtruct the Youths as he ſhall be directed*; and that by *the Youths*, were meant the *St. Omers* Witneſſes, whom his Lordſhip uſed to inſtruct; and it was a common-ſaying, when any of them were out in their Parts, *I muſt go to my Lord* Caſtlemaine *for my Leſſon*; and that his Lordſhip went with them to the Trials, and complained of the ill Uſage ſome of them received there; and that his Lordſhip employed him to get *Lane* out of the *Gate-houſe*.

The Chief Juſtice demanding, How he came into his Lordſhip's Acquaintance? He anſwered, The firſt Time was when he went with the Lady *Powis*'s Letter, and in *July* after, he went to wait on him with ſome Letters of the ſame Purport with thoſe he conveyed into Colonel *Manſel*'s Chamber, to promote the ſham Plot; for there was a Purpoſe, that ſo many Letters ſhould be conveyed into the Houſes of ſeveral Perſons of Quality, called Presbyterians (for that was the Character all Perſons, who were not for promoting the Catholick Intereſt, lay under;) which Letters his Lordſhip approved, and ordered ſeveral Copies to be made of them, ſaying, He would contribute to thoſe who were concerned in that Matter: That in *Auguſt* afterwards, the Day after the Deponent had been treated with by the Lords in the *Tower* to kill the King, he waited on the Lord *Caſtlemaine*, who, ſending his Servant out of the Room, looked upon him with a ſtern Countenance, and demanded, Why he refuſed the Buſineſs for which he was taken out of Priſon; and the Deponent anſwering, Would his Lordſhip have him kill the King? His Lordſhip fell into ſuch a Fury, that he was forced rudely to leave the Room; adding, that he had heard my Lord ſeveral Times, in familiar Diſcourſe, call the King Tyrant.

The Earl's Witneſſes.

The Lord *Caſtlemaine* then entered upon his Defence; and firſt he produced a Witneſs to prove, that *Oates* indicted one *Haſtings* for Sodomy, who was acquitted. Then *Hutchinſon* the Prieſt, who converted *Oates*, was called, who depoſed, He was very poor and neceſſitous. Several Students of the College of St. *Omers*, depoſed, That he was at *St. Omers* when he ſwore he was at *London* at the Conſult.

Records proving Dangerfield a common Cheat.

A great many Records, were produced, being the Convictions of *Dangerfield* for ſeveral notorious Cheats, ſuch as gilding Silver, and paſſing it away for Gold, for which he had been ſeveral Times ſet in the Pillory.

Mrs. *Cellier* depoſed, That the Earl of *Caſtlemaine* was very angry with her, for ſending ſuch a Raſcal as *Dangerfield* to him. And another Witneſs depoſed, that *Dangerfield* ſaid, His Lordſhip was very angry with him, for going to the *Tower* in his Lordſhip's Name, unknown to him.

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Which the Chief Juſtice obſerved, was before the Time *Dangerfield* pretended he had that Diſcourſe with his Lordſhip, about killing the King.

Dangerfield's Evidence contradicted.

The Lady *Powis* depoſed, That ſhe never ſent a Letter by *Dangerfield* to the Lord *Caſtlemaine*, or any body elſe; or read a Letter in his Preſence, or was ever long enough in his Company. And Mrs. *Cellier* depoſed, That no Letter was read by the Lady *Powis* in the Preſence of her and *Dangerfield*.

Other Witneſſes for the King.

Then Sir *Richard Barker* was called as a Witneſs for the King, and depoſed, That his Servants told him, *Oates* was in *London* at *Whitſun-tide* 1678, and that he ſaw him there himſelf the latter End of *June*.

Another Witneſs depoſed, That he ſaw *Dangerfield* at the Lord *Caſtlemaine*'s in *June*, *July*, or *Auguſt*; but he thought it was *July*.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, ſaid, He would have no Man think him partial, where our Religion, the King's Life and the Government, were in danger; but he muſt ſay, there ought to be competent Proofs, where Men were charged with ſuch Things; becauſe their Lives, Eſtates, and Honours, were at Stake: That he thought no great Matter had been offered by my Lord againſt *Oates*'s Credit; but as to *Dangerfield*, they ſaw many enormous Crimes proved againſt him, and though the Law, allowed him to be a Witneſs, yet it was the Buſineſs of the Jury to weigh the Reputation of the Witneſſes; nor did he think a Judge could diſcharge his Conſcience, without taking Notice of ſuch Things: That had *Dangerfield* been only guilty of this Treaſon, he ſhould have thought him a competent Witneſs notwithſtanding, for that was *Oates*'s Caſe too; but when ſo many Crimes of another Sort had been proved againſt him, whether the Man were on a ſudden become a Saint, when he became an Evidence, he left to them. They were to take Notice alſo, how he was contradicted in his Evidence, by the Lady *Powis* and Mrs. *Cellier*; and that, where two Witneſſes were produced, both ſpeaking materially to the ſame Thing, and one was believed, and the other not, then there was in Truth but one Witneſs, which was not ſufficient to find the Priſoner guilty.

The other Judges deliver their Opinion.

Mr. Juſtice *Jones* alſo declared, That it was neceſſary, in a Caſe of Treaſon, *That there ſhould be two Witneſſes believed by the Jury*.

Mr. Juſtice *Raymond* gave it as his Opinion, That both the Witneſſes muſt be believed by the Jury.

Whereupon the Jury, after a ſhort Receſs, brought in their Verdict, That he was *Not guilty*.

Remarks on Lord Caſtlemaine's *Trial.*

At this Trial, the Eyes of the reſt of the Judges (as well as of the Chief Juſtice) ſeem to be opened; they appear to have reſumed their Reaſon and their Courage, and determined no more to be made the Tools of an

inſolent

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insolent Faction, to hunt down such Gentlemen as they were pleased to mark out for Destruction: They now very honestly inform the Jury, that they ought to take Notice of the infamous Characters of the Witnesses, and that, where there were not two Witnesses *believed* by them, the Prisoner ought to be acquitted: And the Chief Justice very justly observes that a Judge could not discharge his Conscience, without taking Notice of such Things to the Jury: But how different this Conduct was from their Behaviour at some former Trials, is obvious to every common Reader. How did they at first fall in with the common Cry! How did they brow-beat and threaten both the Prisoners and their Witnesses, when they endeavoured to make the scandalous Lives of the King's Evidence appear, and tell them, that no Improbabilities in their Testimony, how shocking soever, ought to be considered, where they had the Oaths of two positive Witnesses; not only insinuating, that the Witnesses ought to be believed, but declaring it was *impossible* their Testimony could be disbelieved. 1680. 32 Car. II.

These Proceedings must make future Judges exceeding cautious how they fall in with popular Clamours, and are borne down by Noise and Impudence to serve the vile Purposes of Designing Men, whose Revenge, Ambition, or Avarice, put them upon forming pretended Plots to cover and conceal the real Conspiracies they themselves are engaged in, to destroy the Constitution in Church and State: This has ever been the grand Stratagem of the Party, which they have so often played with Success, that they have had the Assurance to revive it again in our Days. They find many People so exceeding weak, as to be deceived frequently by the same Wiles their Fathers practised, and indeed to have less Sagacity than *Solomon* could suppose Brute Animals had, where he says, *Surely in vain the Net is spread in the Sight of any Bird.*

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Proceedings against the Lord Chief Justice Scroggs.

Articles of *High Misdemeanors*, offered to the Consideration of his Majesty and the Privy-Council, against Sir WILLIAM SCROGGS, Lord Chief Justice of the *King's-Bench*, by *Titus Oates*, and *William Bedloe*. *Anno* 1679. 31 *Car.* II. 1679. 31 Car. II.

Articles exhibited to the Council by Oates *and* Bedloe.

1. THAT the said Chief Justice had set at Liberty several Persons accused of High-Treason, particularly the Lord *Brudenel*, *&c.*

2. That at the Trial of Sir *George Wakeman*, and others, he did brow-beat and curb the said *Oates* and *Bedloe*, two of the principal Witnesses for the King; spoke slightly of them, misrepeating and omitting material Parts of their Evidence, whereby the Parties were acquitted of the Fact, though fully proved by the said Witnesses.

3. That, after the Trial of Sir *George Wakeman*, *&c.* he said, they were not to be believed, should be believed by him, to their great Disparagement.

4. That he oppressed his Majesty's Subjects, by long Imprisonment, particularly *Henry Care*, for publishing *The Weekly Packet of Advice from Rome*, discovering the Idolatries of the Papists, though the said Book contained nothing contrary to Law, and refused to admit him to Bail.

5. That he refused to admit to Bail *Jane Curtis*, *Francis Smith*, and others (charged with publishing seditious Libels).

6. That the said Chief Justice was addicted to cursing, swearing, and drinking to Excess; and at the House of a certain Person of Quality publickly uttered many Oaths and Curses, and drank to Excess.

7. That he had admitted to Bail *Charles Price*, charged with being a Popish Priest; and several other Persons charged with High-Treason.

8. That he had refused his Warrant to search for Popish Priests and Jesuits; and in a slighting and scornful Manner bid the Informer go to Sir *William Waller*, who busied himself in such Matters.

9. That, at the Trial of *Knox* and *Lane* for endeavouring to discredit the said *Oates* and *Bedloe*, he did not give any Directions to the Jury, but abruptly left the Court before they gave their Verdict, to the great Disparagement of the King's Witnesses, the said *Oates* and *Bedloe*.

10. That he permitted *Osborn*, who was engaged with *Knox* and *Lane* to discredit them, to make an Affidavit before him, reflecting on the said *Oates* and *Bedloe*, without the Consent of his Majesty, or his Council, or of the said *Oates* and *Bedloe*.

11. That the said Chief Justice *had dared to say*, in Presence of his Majesty and the Council, That he thought *Oates* and *Bedloe* always had an Accusation ready against any Body.

12. That he said to *Bedloe*, at *Monmouth* Assizes, that he did believe in his Conscience that *Richard Langhorne*, whom he had condemned, died wrongfully.

13. That he made Merchandize of the Trials of Sir *George Wakeman*, and some Popish Priests, selling them to the Booksellers: And though he took 20 Guineas Earnest of one Set of Booksellers, yet sold them to another, and would not return the Earnest he had taken.

The Answer of Sir William Scroggs, *Knt. Lord Chief Justice, to the Articles exhibited by* Titus Oates *and* William Bedloe. *The Chief Justice's Answer.*

1. To the first he saith, That the Lord *Brudenel* was bailed, and afterwards discharged by the Court of *King's-Bench*; and that *Bedloe* used much Importunity to get him discharged, declaring he had nothing to say against him.

2. That

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2. That the ſecond Article was a Reflection upon the whole Court; but it having been urged at the Trial, That if *Oates* had charged Sir *George Wakeman*, with ſuch a Letter, under his Hand, before the Council, they would have committed him: *Oates* anſwered, *That that Council would commit no body for the Plot*, which might occaſion his being frowned upon.

3. To the third he ſaid, There were ſome Paſſages in that Trial which gave him great Cauſe to doubt.

4. and 5. To theſe Articles he ſaid, The Perſons mentioned in them were committed for publiſhing libellous and ſcandalous Papers, according to Law; but there was no Law for theſe Men to call him to an Account for judicial Acts relating to others.

6. The ſixth was an inſolent Scandal, and he referred himſelf to the Teſtimony of that Perſon of Quality, whoever he was.

7. The Perſons, mentioned in this Article, were bailed, and diſcharged by the Court; the Attorney-General being firſt called, but indeed the Conſent of *Oates* and *Bedloe* was not asked.

8. He ſays he does not think himſelf obliged to do all the Buſineſs of a Juſtice of Peace; but it was a Servant that gave that Anſwer.

9. To the ninth he ſays, He told the Jury the Matter was plain, and went away, to try Cauſes in *London*, without paying any Compliment to Mr. *Oates*.

10. He ſays, that the Affidavit, mentioned in this Article, was not ſworn before him, but two others, in one of which *Osborn* depoſed *Oates* had ſaid, *That the Kingdom of England would never flouriſh, till it became Elective:* And in the other, that he was not ſled at *Knox*'s Trial, as *Oates* had ſworn.

11. To the eleventh he anſwered, It was more to be wondered how *Oates* dared to charge that as an Article of a Miſdemeanor, which was ſaid in the King's Preſence, and repeated falſe too.

12. That he did tell Mr. *Bedloe*, at *Monmouth* Aſſizes, that he was more unſatisfied at *Langhorne*'s Trial than all the reſt; for that he was credibly informed ſince, That Mr. *Langhorn*'s Study was ſo ſituate, that one who was walking in his Chamber could not ſee him write in his Study, which was *Bedloe*'s Evidence.

13. That this was Matter of meer Contract with other Men, of which he did not think himſelf bound to give *Oates* and *Bedloe* an Account: But that by taking Twenty Guineas he loſt Forty; and that his Backwardneſs to go to *Wakeman*'s Trial, did not look as if he had received 10000 *l.* to favour *Wakeman* (as theſe Witneſſes had given out.)

Concluding that if theſe Articles ſhould appear to his Majeſty to be frivolous, ſcandalous, or not true, his Majeſty would pleaſe to ſhew his juſt Reſentment thereon, in Honour to his Courts and Government: And that ſuch an unprecedented Attempt might not go unpuniſhed, the Promoters of it might be left to be proceeded againſt according to Law.

This Matter was debated before the King and Council, the 21ſt of January 1679, and Oates *and* Bedloe *left to be proſecuted at Law.*

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The Party not ſucceeding in this extraordinary Attempt againſt the Chief Juſtice, before the King and Council, brought the very ſame Accuſation againſt him before the Houſe of Commons, in *November*, 1680, and were ſo ſucceſsful there, as to procure an Impeachment of High-Treaſon to be preferred againſt him, conſiſting of Eight Articles.

Complaints againſt the Chief Juſtice to the Houſe of Commons.

1. By the firſt whereof it was charged, that the ſaid Chief Juſtice *Scroggs* had *traiterouſly* endeavoured to ſubvert the fundamental Laws, Religion and Government of this Kingdom, and inſtead thereof to introduce Popery and arbitrary Power.

Articles of Impeachment for High-Treaſon reſolved on.

2. That he arbitrarily diſcharged the Grand Jury of *Middleſex*, in *Trinity-Term*, 1679, before they had made their Preſentments, and found ſeveral Bills of Indictment before them, by which illegal Diſcharge of the ſaid Jury, the Courts of Juſtice was maliciouſly ſtopped, the Preſentments of many Papiſts, and other Offenders, were obſtructed, and in particular *a Bill of Indictment againſt* James *Duke of* York, *for abſenting himſelf from Church*, which was then before them, was prevented from being proceeded upon.

3. That the Chief Juſtice, and the reſt of the Judges of the *King*'s-*Bench*, did make a Rule of Court, that *The Weekly Packet of Advice from Rome*, publiſhed by *Henry Care*, ſhould not be printed or publiſhed, thereby aſſuming to themſelves a Legiſlative Power.

4. That he, and the reſt of the Judges of that Court, had moſt notoriouſly departed from all Rules of Juſtice, in the Impoſition of Fines on Perſons convicted of Miſdemeanors; being manifeſtly partial to Papiſts, and Perſons popiſhly affected, and grievouſly oppreſſing his Majeſty's Proteſtant Subjects.

5. That he refuſed to bail Perſons that were bailable, particularly *Care*, *Broome*, *Harris*, *Smith*, *Curtis*, &c. which was a high Breach of the Liberty of the Subject, deſtructive of the fundamental Laws, and tending to introduce arbitrary Power.

6. That he had granted Warrants for attaching the Perſons, and ſeizing the Goods of his Majeſty's Subjects, not named or deſcribed, particularly in the ſaid Warrants *(againſt ſeditious Libels and their Publiſhers)*

7. That he openly defamed and ſcandalized ſeveral of the Witneſſes of the Popiſh Plot; endeavouring to diſparage their Evidence, and take off their Credit; traiterouſly endeavour to ſtifle and diſcourage the Diſcovery of the ſaid Plot.

8. That the ſaid Sir *William Scroggs*, by his frequent and notorious Exceſſes and Debaucheries, and his prophane and atheiſtical Diſcourſes, did daily affront Almighty God, diſhonour his Majeſty, give Countenance and Encouragement to all Manner of Vice and Wickedneſs, and brought the higheſt Scandal on the publick Juſtice of the Kingdom.

All which Words, Opinions and Actions, were ſpoken and done traiterouſly, and maliciouſly,

An odd Concluſion of the Articles.

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liciouſly, to alienate the Hearts of the King's Subjects from his Majeſty; to ſet a Diviſion between him and them; to ſubvert the fundamental Laws, Religion and Government, and to introduce Popery and arbitrary Power: For which they impeached him of High-Treaſon, and other High Crimes and Miſdemeanors;

Praying that the ſaid Sir *William Scroggs*, Chief Juſtice of the Court of *King's-Bench*, may be put to anſwer the Premiſſes, and committed to ſafe Cuſtody.

The Queſtion being put, to impeach the Chief Juſtice, on theſe Articles, ſeveral Speeches were made on the occaſion, for and againſt it; of which I ſhall tranſcribe one or two on each Side, which will give a conſiderable Light into this Matter.

Sir Thomas Lee *againſt the ſaid Impeachment.*

Sir *Thomas Lee* ſtood up and ſaid, Mr. Speaker, In my Opinion, the Matter contained in the laſt ſeven Articles does not anſwer the firſt Article, or the Title: For therein you accuſe Sir *William Scroggs* in general Words of High-Treaſon, the higheſt of Crimes; and when you come to Particulars, you inſtance the diſſmiſſing of Grand Juries, prohibiting the printing of Pamphlets, the Inequality of levying Fines, and the like. Sir, I would not be underſtood to be an Advocate for the Lord Chief Juſtice *Scroggs*, but I hope, as long as I ſit here, you will always give me Leave to be an Advocate for this Houſe; which I cannot more ſignally demonſtrate, than by offering my Opinion againſt every thing which I think will reflect on the Juſtice or Prudence of the Houſe, or prove any Hindrance to the finiſhing of thoſe great Affairs you have under Debate.

Sir, I am of Opinion, that though all theſe Things, contained in theſe Articles, ſhould be fully proved, they will not amount to Treaſon; and although it be true that you do but impeach, and that the Lords are to judge; yet it is not agreeable to the Juſtice of this Houſe, that the Articles ſhould be for Treaſon, unleſs you can make out, that the Matter contained in the Articles is ſo; which I very much doubt: And therefore am of Opinion, that the Articles ought only to be for high Crimes and Miſdemeanors; which I am the more forward earneſtly to preſs you to, becauſe I am afraid if theſe Articles ſhould go for High-Treaſon, it may occaſion ſome Diſpute with the Lords, who happily, if they do not conclude that the Matter contained in the Articles amounts to Treaſon, will not commit him, notwithſtanding their Order made in the Earl of *Danby*'s Caſe. And this may occaſion ſuch Miſunderſtandings, as may hinder all other Buſineſs: Alſo if you ſend it up for High-Treaſon, it may occaſion another Diſpute with the Biſhops, whether they ſhall withdraw or no, when the Caſe comes to be tried: Upon the whole Matter, I think it will be much ſafer that you make the Impeachment for High Crimes and Miſdemeanors only.

Mr. Finch *againſt it.*

Mr. *Daniel Finch* (afterwards Earl of *Nottingham*) ſaid, Mr. Speaker, My Obligation to ſerve my Country calls on me to give you my Opinion in this Matter, and not any Kindneſs to my Lord Chief Juſtice; for I can ſafely declare, that I do not think him fit for that eminent Place now; becauſe indeed I never thought he was fit: So that what I ſhall ſay proceeds from my Kindneſs to the Publick, and my particular Obligations to this Houſe: I think we ought to be cautious how we increaſe Laws to take away our Lives: Our Fore-fathers were very careful in it, as appears by the Statute of 25 *Edw.* III. which was made to prevent the Judges taking on them any Power, to declare any Thing Treaſon, but what was expreſſed within that Statute; reſerving all obvious Crimes of that Nature, to the Judgment of the Nation in Parliament, who, no doubt, may declare other Things Treaſon, which are not within that Statute: But it is a queſtion with me, whether it can be done any other Way, than by Bill, that ſo it may be an Act of King, Lords, and Commons, and not for the Houſe of Lords only, the Commons only Proſecutors, and the King not concerned.

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That the Lords alone are proper Judges in many Caſes, when Perſons are proſecuted upon ſome known Law, is not to be doubted: But I much queſtion, if they ought to be ſo in Caſes of Declarative Treaſon, though upon an Impeachment from the Houſe of Commons; for that were to allow the Lords alone a Power of making a Law in Caſes of the higheſt Nature, even of Life and Death. Sir, our Fore-fathers thought not good to entruſt their Lives or Liberties with any one Eſtate alone; they thought, in a Multitude of Counſellors there was moſt Safety: And therefore, I hope, we ſhall be very cautious how we make a Precedent in the Caſe. And I am the more earneſt in moving herein, becauſe I am very confident that no Precedent can be offered to make good, that there ever was any thing declared Treaſon in Parliament, which was not Felony by ſome expreſs known Law before. And I hope we ſhall be ſo careful of ourſelves, and our Poſterity, as not to go about to make a Breach upon the Conſtitution of the Government, in this Particular; but rather make it an Impeachment only for high Crimes and Miſdemeanors.

Sir Francis Winnington *for the Impeachment.*

Sir *Francis Winnington*, on the other Side, ſaid, Mr. Speaker, I cannot agree with that honourable Member that ſpoke laſt, as to his Notion, that the Parliament cannot declare any thing to be Treaſon, which was not Felony before: The Statute of 25 *Edw.* III. leaves the Power at large to Parliaments, without any ſuch Reſtriction. And I am of Opinion, that any thing that tends to the Deſtruction, or Alteration of the Government, hath always been, and always ought to be, declared Treaſon in Parliament, if brought there to be adjudged. The Parliament doth not in this make new Crimes, and then condemn them; but only declares that to be a Crime which was ſo before, and wanted nothing but Condemnation. And it may conſiſt with the Prudence of this Houſe, as well to be careful how to weaken thoſe Laws, and Cuſtoms, which tend ſo much to the Preſervation of the Government, as how to increaſe any that may tend to the Deſtruction of any one Man, by

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Precedents cited.

by multiplying Precedents for chaſtiſing Treaſon: The Crimes for which *Treſilian*, and the reſt of the Judges, in the Reign of *Richard* II. were impeached, were not Felony by any known Law, and yet they were condemned by Parliament. *Empſon* and *Dudley* were accuſed in general, for endeavouring to ſubvert the Government, which being in general Words, was not Felony by any known Law; yet, the Judges having Recourſe to Parliament, they were condemned. The Articles againſt *Finch*, *Berkley*, and the reſt of the Judges *(Anno* 1641*)* were all for High-Treaſon, and the Matter, contained in the Articles, amounted to no more than what is contained in this. There is ſo little Weight in the Caſes that have been offered againſt this, that I think they are offered for Ornament, rather than Argument. The Chancellor is the Keeper of the King's Conſcience; and the Judges of his Coronation Oath. As they are in great Places, and have great Power, ſo they ought to be more careful how they behave themſelves: And as they have greater Encouragements, ſo they ought to be ſubject to more ſevere Chaſtiſements than others, the Publick being more concerned in their Actions: And therefore the Cuſtom of Parliaments hath made that Treaſon in them, which is not ſo in other Perſons; the Words of Judges, and Privy-Counſellors, in ſome Caſes, are Overt-Acts of themſelves. I think it will become the Wiſdom of the Nation, to make all the Defence and Proviſion they can againſt the corrupt Doings of Men in thoſe Places; and I do not ſee what Danger can ariſe to Poſterity by ſuch Proceedings. Is it not with the Parliament we intruſt this Power? Who can imagine that ever a Parliament can be ſo conſtituted, as not to be carefully concerned in their Proceedings, as to Life and Death; and only to concern themſelves therein, when ſome extraordinary Exigencies, in which the Government is much concerned, requires it? What Man would deſire to live, after he was thought worthy of Death by ſuch an Aſſembly? And notwithſtanding what has been ſaid, to extenuate the Crimes mentioned in theſe Articles, I think that the Order that was made in the *King's-Bench*, about printing, by the Judges, was taking on them a Legiſlative Power, which hath formerly been adjudged Treaſon: And I think now we live in as dangerous Times as ever, under as great Neceſſity to have a Care of the Miſchiefs that may happen to the Nation, by ill Judges as ever; and I ſee no Reaſon to doubt our being able to make good theſe Articles.

Mr. Powel for it.

Mr. *Powel* ſeconded Sir *Francis Winnington*, repeating good Part of his Argument, and inſiſted on the Precedent in the reign of *Richard* II. and the Condemnation of a Knight in *Cheſhire*, for conſpiring the Death of the King's Uncle; and of the Earl of *Northumberland*, for giving a great Number of Liveries; concluding, that he was of Opinion, that the Order made in the *King's-Bench* againſt Printing their Warrants for ſeizing of Books, and their diſſmiſſing Grand Juries, did tend to the Subverſion of the Government and had been, and ever ought to be, in Judges, adjudged High-Treaſon; and therefore it could not conſiſt with the Prudence of the Houſe, or the Security of the Nation, that the Chief Juſtice ſhould be impeached of any thing leſs than High-Treaſon.

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Sir Richard Temple againſt it.

Sir *Richard Temple* replied, Mr. Speaker, I cannot admit that Parliaments, by Impeachments before their Lords, can make any thing Treaſon, but only ſuch Matters as were Treaſon by Common-Law, before the Statute of *Edward* III. And I think we ought to be ſo cautious of Poſterity, as not to preſs for ſuch Precedents, leſt you put into the Hands of the Lords a Power, for which we may have cauſe to repent hereafter, but never get back again; for the Lords do not uſe to part with thoſe Powers they once get. There are Precedents, by which it appears that the Lords have attempted to make declarative Treaſons alone, without any Impeachment from the Commons. Have a Care how you give them Encouragement to proceed therein: Better keep to the other way of making no declarative Treaſons, but by Bill *(by Act of Parliament.)*

However, it was reſolved that the Impeachment ſhould be engroſſed, and carried up to the Houſe of Lords, by Mr. *Cavendiſh*; and it being carried up accordingly, the Chief Juſtice put in the following Anſwer.

The Anſwer of the Chief Juſtice.

The ſaid Sir *William Scroggs*, by and under Proteſtation, that there is no manner of High-Treaſon, nor any Overt-Act of High-Treaſon, particularly alledged or expreſſed in the ſaid Articles of Impeachment, to which the ſaid Sir *William Scroggs* can, or is bound by Law to make Anſwer unto; and ſaving to himſelf, (and which he prayeth may be ſaved to him) both now, and at all Times hereafter, all, and all manner of Benefit and Advantage of Exception to the Inſufficiency of the ſaid Articles in point of Law; as well for that, there is no overt-act of Treaſon expreſſed therein, as for all other the Defects therein appearing; for Plea thereto he ſaith, that he is no wiſe guilty of all, or any the Crimes, Offences, or Miſdemeanors, of what Nature, Kind, or Quality ſoever, by the ſaid Articles of Impeachment charged upon him, in Manner and Form, as in and by the ſaid Articles is ſuppoſed; which he is ready to aver and prove as this honourable Houſe ſhall award, and humbly ſubmitteth himſelf, and the Juſtice of his Cauſe, to this moſt honourable Houſe, and prayeth to be diſcharged of the Premiſes, and to be hence diſſmiſſed and acquitted of all the Matters, Crimes, Miſdemeanors, and Offences, in, and by the ſaid Articles of Impeachment charged upon him.

His Petition for a Trial.

The Lord Chief Juſtice alſo petitioned the Lords, that whereas he was Impeached by the laſt Parliament, and had put in his Anſwer, they would appoint the Commons to reply; that a convenient Day might be appointed for hearing the Cauſe, and he might no longer lie under the Reproach of High-Treaſon.

The Chief Juſtice reſigns, and has a Penſion.

Whereupon the Lords ordered the Anſwer and Petition to be ſent to the Houſe of Commons; but I do not find there was any further Proceedings thereupon: However it was thought fit that he ſhould reſign the Poſt of Chief

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Chief Juſtice, as he lay under ſuch an Impeachment, and accept a Penſion from the Crown in the Room of it.

Reſolutions to impeach other Judges.

The Commons alſo reſolved to impeach Sir *Francis North*, Chief Juſtice of the *Common Pleas*, Sir *Thomas Jones* another of the Judges of the *King's-Bench*, and Sir *Richard Weſton*, one of the Barons of the *Exchequer:* But it does not appear they proceeded on theſe Impeachments.

Remarks on the Proceedings againſt the Lord Chief Juſtice Scroggs.

The Impudence of *Oates* and *Bedloe*, in preferring that ſcandalous Charge to the King and Council, againſt the Lord Chief Juſtice, is ſurely not to be paralleled. The Editor of this proceeding has indeed dubbed one of them with the Title of Doctor, and the other with that of Captain, to render them more conſiderable in the Eye of the World; but I do not find the firſt was ſo much as a *St. Omers* Doctor, or the other Captain of any thing unleſs it were of a Company of Knights of the Poſt, that he employed to ſecond his own Perjuries: And that theſe vile Wretches ſhould have the Face to tell the Lord Chief Juſtice whom he ſhould bail, and whom he ſhould not admit to Bail, direct him how he ſhould treat the Witneſſes at every Trial, and what Directions he ſhould give to the Jury, is very extraordinary; nay, they charge it as an Offence, that the Chief Juſtice dared to bail People *without their Conſent*, and ſuffered Affidavits to be made before him, reflecting on *their Characters*, and yet were not aſhamed or afraid themſelves to accuſe the Chief Juſtice of being a common Swearer and a Drunkard. This, it is manifeſt, they were encouraged and ſupported in, by Saint *Shaftesbury*, and the Faction, or they durſt not have treated one of the greateſt Magiſtrates in *England* in this Manner.

But what puts it beyond all Doubt, that *Shaftesbury* and his Party were at the Bottom of all this is, that they procured the very ſame Articles to be exhibited againſt the Chief Juſtice, in an Impeachment of the Houſe of Commons, which thoſe deſpicable Tools had preferred to the Council: And ſurely the State was in a very happy Situation at this Time, When two or three abandoned Villains under Pretence of being the King's Evidence, ſhould take upon them to direct and reprehend the Judges of the higheſt Courts, and expect they ſhould ask Leave of them before they bailed or committed an Offender. It is plain the Faction had reduced the Crown to a very low Ebb, when ſuch Inſolence was ſuffered with Impunity. What had the greateſt private Subject to do to preſcribe Rules to the Courts of Juſtice, much leſs Men the moſt obnoxious to Juſtice themſelves of any of the King's Subjects? This was to make the Bar arraign the Bench, and Criminals ſit in Judgment upon their Judges: And yet even this we find countenanced and encouraged by a Party that *Shaftesbury* had formed in the Houſe of Commons; a Party that fell very little ſhort of that which began the Grand Rebellion, and whoſe Artillery was indeed levelled againſt the King. They hoped to wound him through the Sides of his Miniſters, and render him odious to the People, by reflecting on his Judges, that they might have a Pretence to depoſe and murder him as they had his Father; and they had this farther View in attacking the Judges, that none ſhould dare for the future to oppoſe their treaſonable Schemes, or ſtand up in Defence of the Crown or the Conſtitution. Thus they exactly copied after the Precedents their Fore-fathers had ſet them, and had met with the like Succeſs, had not the King been alarmed at their inſolent Proceedings in Time; taken the Reigns of the Government into his own Hands, and ſhewed them that, whenever he was pleaſed to exert his Political Talents, he knew how to protect himſelf and his loyal Subjects, and defeat their impotent Malice.

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The Gentlemen who ſpoke againſt the Impeachment, ſufficiently ſhewed the Abſurdity, and Injuſtice, of Impeaching a Perſon of High-Treaſon, when they were not able to ſpecify one Fact that had the leaſt appearance of Treaſon in it, but leave the Lords to find out and declare ſomething to be Treaſon that was never thought to be ſo before: And they were certainly very unlucky in the Precedents they brought for it, as that in the Reign of *Richard* II. when the Barons broke out into Rebellion againſt the King, and compelled him to ſacrifice his Miniſters and Judges to their Fury; and that other in the happy Days of 41, juſt before the Grand Rebellion, when they charged the Lord *Strafford* with High-Treaſon, for his faithful Service to his late Majeſty, and whoſe Attainder had been repealed by an Act of Parliament of this very Reign: And ſurely very unhappy muſt the Subject be, when every Action of his Life is capable of being interpreted and declared Treaſon, which a Faction in the Houſe of Commons is pleaſed to charge and denominate ſuch.

But never was ſo merry a Concluſion to an Impeachment of High-Treaſon: Namely, that *All* the Chief Juſtice's Words, Opinions, and Actions *(above ſpecified)* were ſpoken and done *Traiterouſly* and *Maliciouſly*, which was as much as to ſay, That he ſwore, curſed, and got drunk, traiterouſly and maliciouſly; for theſe are the Crimes charged againſt him in the laſt Article.

However, this doughty Impeachment was dropped for Matters, the Faction apprehended of more Conſequence, namely, the immediate altering of the Succeſſion, the depoſing their Sovereign, and changing the Monarchy into a Common-wealth, in which we ſhall find they did not meet with the ſame Succeſs their rebellious Anceſtors had done.

Other Judges charged with drawing up Proclamation.

The principal Crime they intended to charge the other Judges with particularly Sir *Francis North*, and Mr. Juſtice *Jones*, whom they likewiſe reſolved to impeach, was their aſſiſting in drawing up a Proclamation againſt tumultuous Petitions for the ſitting of a Parliament, but theſe alſo were dropped, to make room for more important Schemes.

The

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The Trial of ELIZABETH CELLIER, for *High-Treaſon*, at the *King's Bench* Bar. 11th, *June*, 1680. 32 *Car.* II.

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Cellier's *firſt Trial.*

The Charge.

THE Indictment charges the Priſoner with High-Treaſon, in compaſſing the Death of the King, and the Subverſion of the eſtabliſhed Religion and Government; and particularly with paying great Sums to ſeveral Perſons unknown, to kill the King, and to throw the Plot upon other People.

The Evidence of Gadbury.

The firſt Witneſs examined againſt her, was *Gadbury*, the pretended Conjurer and Almanack-maker, who depoſed, That telling Mrs. *Cellier* he could ſay enough to invalidate the Teſtimony of *Oates* and *Bedloe*, ſhe anſwered, ſhe cared not, if it coſt her ten Guineas, if ſhe could diſcover the Truth: That walking through *Weſtminſter-Abby* with the Priſoner, ſhe ſaid, This Place was formerly filled with *Benedictine* Monks, and the *Temple* with Friars; and what if it ſhould be ſo again?

That ſhe alſo demanded of him, when the King was ſick, Whether he would live or die, and ſaid, ſhe was afraid he would die; and the Deponent anſwering, he would not inform her, becauſe it was his Sovereign, ſhe replied, ſhe would go to another Aſtrologer then: That ſhe alſo brought a Nativity to him, to know if the Perſon was to be truſted, and he afterwards underſtood it was *Dangerfield*'s.

Danger-field's *Evidence objected to.*

Then *Dangerfield* was called as a Witneſs; but the Priſoner objected to his Teſtimony, becauſe he had been whipped, tranſported, pilloried and perjured; and produced ſeveral Records of his Conviction, but none for Perjury: Whereupon *Dangerfield* produced his Pardon; but the Chief Juſtice not thinking it reached all the Crimes he was charged with, his Evidence was waved: There being but one legal Witneſs therefore, and his Evidence very defective, the Jury *acquitted* her according to the Chief Juſtice's Direction, and *Dangerfield* was committed.

The Priſoner acquitted. Dangerfield *committed.*

Remarks.

Mrs. *Cellier* had been pretty buſy in ſearching into the Characters of the Witneſſes of the pretended Popiſh Plot, and in detecting the vile Practices of Lord *Shaftesbury*, and the Faction, to ſupport the Credit of it; but had the good fortune to eſcape this Time: However upon publiſhing a Pamphlet afterwards, in which ſhe ſtated her Caſe, and made ſome Reflections on the King's Witneſſes, as they were called, ſhe was brought upon the Stage again, and ſuffered ſeverely for her Indiſcretion, as will appear in a future Trial.

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The Trial of HENRY CARE, for a *Miſdemeanor*, in publiſhing a ſcandalous Libel, at *Guild-hall*, 2d *July*, 1680. 32 *Car.* II.

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Care's *Trial.*

The Charge.

THE Information charges, That whereas there was a Plot, and traiterous Conſpiracy, againſt his Majeſty, and the eſtabliſhed Religion and Government, of which divers Traytors had been convicted; the ſaid *Henry Care*, intending to ſcandalize and bring into Contempt the Juſtice of the Kingdom, did on the 18th of *Auguſt* laſt, at the Pariſh of St. *Sepulchres*, *London*, print and cauſe to be publiſhed a ſcandalous Book entitled, *The Weekly Packet of Advice from* Rome, in which were the following Expreſſions: *viz.* "There is lately found out by an "experienced Phyſician, an incomparable "Medicament, called, the Wonder-work-"ing Plaiſter, truly Catholick in Operation, "ſomewhat of kin to the Jeſuit's Powder, "but more effectual. The Virtues of it are "ſtrange and various: It will make Juſtice "deaf as well as blind: Take out Spots of "deepeſt Treaſons, more cleverly than Caſtile-"Soap does common Stains: It alters a Man's "Conſtitution in two or three Days, more "than the Virtuoſo's tranſfuſion of Blood in "ſeven Years: Is a great *Alexipharmick*, and "helps Poiſons and thoſe that uſe them: It "miraculouſly exalts and purifies the Eye-"ſight, and makes People behold nothing "but Innocence in the blackeſt Malefactors: "It is a mighty Cordial in a declining Cauſe; "ſtifles a Plot as certainly as the Itch is de-"ſtroyed by Butter and Brimſtone: It makes "Fools Wiſe Men, and Wiſe Men Fools, "and both of them Knaves. The Colour "of this Balm is bright and dazling, and "being applied privately to the Fiſt, in de-"cent Manner, and a competent Doſe, in-"fallibly performs all the ſaid Cures and "many others". Which was ſaid to be done in great Contempt of the King, to the Scandal of the Government, the Adminiſtration of Juſtice, &c.

The Evidence.

The Printer *Stevens*, depoſed, That he treated with *Care* as the Author of the Book and received the Copy from him, or his Order: He did not remember that any body but Mr. *Care*'s Boy brought any Part of the Copy to him.

The Printer's Man depoſed, That he received ſeveral Parts of the Copy of the Weekly Packet from *Care*'s own hand; but he could not ſay the particular Paper in the Information; and that Mr. *Care*'s Boy brought ſome of the Copy.

His Defence.

Sir *Francis Winnington*, and the reſt of the Priſoner's Counſel, ſaid in his Defence, That Mr. *Care* was a Satyriſt againſt Popery, and his Packets were very well liked, 'till he committed this Fault: An extravagant Flight might ſlip from him without any ill Intention; and as he was a good Subject, and loved the Government in Church and State, he could not be ſuppoſed guilty of Malice. Then two or three Witneſſes were called, who depoſed,

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they had ſeen him at Church, but could not ſay he ever received the Sacrament: And Sir *Francis Winnington* inſiſted, that he was not proved the Author of that individual Paper in the Information.

The Chief Juſtice's Directions.

The Chief Juſtice, in his Directions to the Jury, ſaid, he at firſt took it to be a Cauſe of ſmall Moment, but was convinced, by the Noiſe and Shouts during the Trial, that it was a Party Buſineſs; and told the Jury, they were not to concern themſelves whether the Priſoner was Malicious or not, but only to try the Fact, whether he publiſhed the Book; and if they found him Guilty, he would judge whether it implied Malice: Whereupon the Jury withdrew, and after an Hours Receſs, brought in their Verdict, That the Priſoner was *Guilty*. And he was ſentenced to pay a Fine of to be ſet in the Pillory and impriſoned.

Remarks.

The Priſoner's Counſel ſeem to admit the Fact at firſt, and then pretend that the Particular Paper in the Information, was not proved to be his; but as the Printer depoſed, he treated with *Care* for the Copy, and received all the Copy from him or his Servant, this Paper muſt be included.

And here we find, when the Faction could no longer blind the Judges with falſe and ſpecious Tales, atteſted by their Knights of the Poſt, their next Stratagem was to employ Swarms of Scriblers, to accuſe the Judges of Bribery and Corruption, and even to charge them formally with Partiality and Injuſtice before the Privy Council and the Parliament: Whereby they hoped to deter the Judges from prying too narrowly into their Knavery, or to get theſe removed and others put in their Places, that would comply with their dictates: And could they have made the Judges of *Weſtminſter-Hall* their Tools, no Doubt but they might have ſupported the Credit of this, or any other Plot they were pleaſed to invent, and by this means have deſtroyed all the true Friends of the Conſtitution on Pretence of their being Popiſhly affected. This was the Game they played with ſuch Succeſs in the Year 41, when every Judge, that durſt appear faithful to his Prince, and the Truſt repoſed in him, and would not ſubmit to the Direction of the Rebels, was immediately charged with High-Treaſon: And King *Charles* being ſurrounded with a Set of treacherous Courtiers, who adviſed him to give up his Judges, and his beſt Friends to their Rage; loſt all manner of Power and Influence in his Dominions in that very Inſtant. Thoſe who were deſirous to ſerve their King, found he could no longer protect them, ſince both the Miniſtry and Judges were become accountable to the Commons: But it is to be preſumed, that future Princes, from this Example, will be cautious how they ſuffer themſelves to be ſtripped of their Authority, by the Clamours of a reſtleſs Faction, againſt their Judges and Miniſters, who are uſually attacked in the firſt Place, in order to make their Way to the Throne itſelf: On the other Hand, it is acknowledged to be the Intereſt and Duty of every Prince, to abandon thoſe Miniſters and Judges, he is ſatisfied have abuſed him, or his People; and even to puniſh their Miſdemeanors himſelf, with the utmoſt Severity and Diſpatch; for Men will ever form ſome Notion of the Maſter from the Servants he employs. If the Miniſter wants either Capacity, or Integrity, it is preſumed the Prince is defective in his Intellects, or in his Concern for the Welfare and Protection of his People.

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Giles's Trial.

The Trial of JOHN GILES, for an *Aſſault* on JOHN ARNOLD, Eſq; a Juſtice of Peace for *Monmouthſhire*, 14 *July* 1680. 32 *Car.* II.

The Indictment.

THE Indictment charges the Defendant, That he, together with divers others, on the 15th of *April* laſt, aſſaulted the ſaid *John Arnold*, at the Pariſh of St. *Dunſtan in the Weſt*, in the County of *Middleſex*, cutting the Throat and Face of the ſaid *John Arnold* with a Knife, and giving him ſeveral other dangerous Wounds with their Swords; one whereof between his Belly and his left Pap, of the Depth of ſeven Inches; two others in his Breaſt, and two in his left Arm.

The Obſervations of the King's Counſel.

The King's Counſel, in opening the Evidence, obſerved, That this was a Branch of the Popiſh Plot; and that the Reaſon of this cruel Aſſault upon Mr. *Arnold*, was occaſioned by his putting the Laws in Execution againſt Papiſts; and particularly his proſecuting and convicting one *Evans*, a Popiſh Prieſt.

Arnold's Evidence.

Then Mr. *Arnold*, was ſworn, who depoſed, That on the 15th of *April* laſt, he was with ſome Company at the *Devil-Tavern*, near *Temple-Bar*, till Ten o'Clock at Night; and then remembring he had Buſineſs with Mr. *Philips*, his Counſel, who lived near the End of *Bell-Yard*, he deſired the Company to ſtay a Moment till he returned, and deſired his Friends Servants, who waited in another Room, to go with him: Croſſing *Fleet-Street*, to *Bell-Yard*, he ſaw two Men in Cloaks follow him, and imagined they were the Servants he had called; but entering *Bell-Yard*, one of them got before him, and looked earneſtly in his Face: The Deponent paſſed him again, and by the Light of a Candle in a Woman's Hand, ſaw perfectly that it was the Priſoner, whoſe Companions coming up, they laughed aloud; but he continued his Way to *Jakanapes-Lane* End, and there, as he was looking for the Kennel, a Cloak was thrown over his Head, and they run him croſs the Lane, againſt a Wall, with that Violence, that they broke his Head: Then he drew his Sword, but could not turn about to defend himſelf, before he was knocked down, and perceived a ſharp thruſt in his Side, the Point running

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running into his Belly: He was afterwards run through both Arms with a broad Sword, and through one of his Arms with a ſmall Weapon, and received ſeveral other Wounds. And while one of them kept him down, with his Foot on his Breaſt, the Perſon that kept him down was run into the Leg by another of his Companions, and ſaid, *Damn me, thou haſt ſpoiled my Leg:* That the Deponent received ſeveral Wounds in his Body, notwithſtanding he had a Pair of Whale-bone Bodice on, and ſome of them perceiving it, ſaid, *Damn me, he has Armour on*; whereupon one of them gave him ſeveral Cuts in the Face, and he thought he ſhould never recover ſome of the Wounds and Bruiſes he received: That there being a Candle in a Window, and a Link-boy paſſing by, he again ſaw the Priſoner's Face; and the Cloak being pulled off, he cried out, and People came in, and carried him to the *Sugar-Loaf*, and from thence to his Lodgings, and ſent for a Surgeon: That the Aſſaſſins laughed aloud all the while they were cutting and hacking him; and when they went away, one of them ſaid, *Now, you Dog, pray for the Soul of Captain* Evans.

Other Witneſſes depoſed, they heard *Giles* the Priſoner ſay, He muſt make Haſte into *Glouceſterſhire*, leſt he ſhould be ſtopped on Suſpicion of *Arnold*'s Buſineſs.

A Sword-Cutler, of *Uſke*, in *Monmouthſhire*, depoſed, That *Giles* came to him to mend his Sword, and demanding if he had been fighting with the Devil? *Giles* anſwered, *No*; *but with damn'd* Arnold.

Another depoſed, That the Day Mr. *Arnold* was wounded, *Giles* asked him where he might buy a good Rapier? To which he anſwered, He did not know; but he had then a good broad Sword.

Others depoſed, *Giles* was out of his Lodgings at Ten that Night nor could he give an Account where he was at that Time.

Other Evidence.

Other Witneſſes depoſed, He was a Papiſt or popiſhly affected: That he was acquainted with *Lewis* the Jeſuit, and ſaid he would perſuade the Executioner not to execute *Lewis*; and afterwards attending at the Execution, he ſaw *Giles* dip Cloths in *Lewis*'s Blood, when he was quartered.

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Hobbs, the Surgeon, depoſed, That he ſaw Mr. *Arnold*'s Wounds, which were as he had related; and that they could not be given by himſelf, as the Priſoner ſuggeſted.

The Recorder's Directions.

The Recorder *Jeffries*, in ſumming up the Evidence, ſaid, In Caſes of this Nature, the Laws of *England* had not proportioned the Puniſhment to the Crime: He thought it was impoſſible now to doubt the Truth of the Plot: This Piece of Villainy was little ſhort of that acted upon Sir *Edmund-bury Godfrey*: That *Giles* could give no Account where he was that Night, from Nine to One; and though the Proof ought to be very ſtrong, it was not to be expected it ſhould be altogether ſo full, as in Caſes of private Right, and where Things were tranſacted publickly, in the Face of the Sun.

Giles is convicted.

The Jury, after half an Hour's Receſs, brought in the Priſoner GUILTY: Whereupon he was ſentenced to ſtand three Times in the Pillory, *viz.* in *Lincoln*'s-*Inn-Fields*, at *Gray*'s-*Inn*, and at the *May-Pole* in the *Strand*: To pay a Fine of 500 *l.* and lie in Priſon till he paid it, and find Sureties for his good Behaviour for Life.

Remarks.

It is highly probable that *Giles*, and his Company, committed this Outrage on Mr. *Arnold*, for his proſecuting Popiſh Prieſts, and eſpecially *Lewis* the Jeſuit, who was executed a little before; for I could never hear they had any other Quarrel with him. And our Laws ſeem exceeding defective, as the Recorder obſerves, that ſuch deſperate Aſſaſſins ſhould eſcape with ſo inconſiderable a Puniſhment: Whereas, for taking a ſingle Penny from a Man, the Puniſhment is Capital.

The Trials of Sir THOMAS THWYNG, and MARY PRESSICKS, for *High-Treaſon*, at *York* Aſſizes, 29 *July* 1680. 32 *Car.* II.

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Thwyng's Trial.

The Charge.

THE Indictment charges the Priſoners with High-Treaſon, in compaſſing the Death of the King, the Subverſion of the Government, and the Proteſtant Religion; with aſſembling and conſulting to put the ſaid Treaſons in Execution, contributing ſeveral Sums of Money to accompliſh their ſaid traiterous Deſigns, and giving Notes for more.

Bolron's Evidence.

The Witneſſes being called, *Bolron* depoſed, That he was made Steward of Sir *Thomas Gaſcoigne*'s Coal-works, in 1674, and in 75 he turned Papiſt; and that in *January* 76, Father *Ruſhton*, his Confeſſor, with the Priſoner *Thwyng*, and ſeveral others, came to the Deponent's Houſe, and asked him how he ſtood affected to the Roman Catholick Religion, and if he would venture his Life and Eſtate in it on Occaſion? To which the Deponent agreeing, *Ruſhton* gave him the Oath of Secrecy; and in 1677, Sir *Thomas Gaſcoigne*, Sir *Miles Stapleton*, the Lady *Tempeſt*, Mr. *Ruſhton*, the Priſoner *Thwyng*, and ſeveral others, met in the old dining Room at Sir *Thomas Gaſcoigne*'s Houſe, and agreed the King ſhould be killed; and *Thwyng* ſaid, if they loſt this Opportunity, they ſhould never have the like again; and that the effecting it would be very beneficial to the Church of *Rome*. They alſo agreed to erect a Nunnery at *Dolebank*, after the King ſhould be killed; and the Lady *Tempeſt* offered them *Broughton* for the preſent, and *Thwyng* was to be Confeſſor to the Nunnery: That the Deponent paid 10 *l.* to *Ruſhton* in *Thwyng*'s Preſence, towards killing the King, and ſaw a Liſt, in *Thwyng*'s Hands, entitled, *A Liſt of the Names of the Actors, and*

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and Contributors, engaged in the Deſign of promoting the Roman Catholick Religion, and alſo of eſtabliſhing a Nunnery: By which was meant raiſing Money for killing the King. And *Thwyng* told the Deponent afterwards, That 30,000 *l.* was raiſed in *Yorkſhire*, *Lancaſhire*, and *Derbyſhire*, for killing the King; and the Liſt of Particulars was ſent beyond Sea.

That in 1678, the Deponent diſcourſing with the Priſoner *Preſſicks*, about the Plot, at his own Houſe, ſhe ſaid, Father *Harcourt*, her Confeſſor, firſt engaged her in it. That *Pickering* told her, he was to have killed the King, and ſhe was ſorry he did not do it: The King was an Aſs, and not fit to govern; for what Money the Parliament gave him, he ſpent upon Whores and Concubines.

Mowbray's *Evidence.*

Mowbray depoſed, That about *Michaelmas* 1676, *Ruſhton*, *Addiſon*, and *Thwyng* the Priſoner, with other Prieſts, met at *Ruſhton*'s Chamber, and agreed to kill the King, becauſe he had not kept his Promiſe, made to the Jeſuits beyond Sea, to bring in their Religion; and ſaid that *York* and *London* were to be fired: And that Force muſt be uſed againſt the King, and all other Hereticks, that oppoſed the Advancement of their Religion. It was not only lawful, but meritorious to kill him: That there was a Liſt of thoſe engaged in the Deſign, and *Ruſhton* and the Priſoner *Thwyng* were the Managers of it.

Mrs. *Bolron*, the elder, depoſed, That the Priſoner *Preſſicks* ſaid ſeveral Times, that ſhe knew of the Plot: That *Pickering* was to have killed the King, and ſhe was ſorry he did not do it; though it had been done, if it had not been for *Oates* and *Bedloe*: There would be no Quiet in *England*, till the Roman Catholicks got the upper Hand, and there was not a Proteſtant left in *England:* The King ſpent his Money among Concubines, and was not worthy to be a King, and hoped an Army of Catholicks would be raiſed to bring in Popery.

Mrs. *Bolron* the younger, depoſed, That in 1678, ſhe heard *Preſſicks* the Priſoner ſay, That there was a great Conſpiracy carrying on, to alter the Government, and eſtabliſh the *Romiſh* Religion.

John Hutchinſon depoſed, That he heard *Preſſicks* the Priſoner ſay, We ſhould never be at Peace, till we were all of the Roman Catholick Religion; for the King was an Heretick, and ſpent more Money on his Whores, than on his Queen: We ſhould never be at Eaſe, till the Duke of *York* was made King.

Thwyng's *Defence.*

Thwyng, the Priſoner, called ſome Witneſſes, who depoſed, That the King's Witneſſes ſwore againſt him maliciouſly at this Trial; but that they had declared formerly, that neither Sir *Thomas Gaſcoigne*, to whom he was related, nor any of his Family were concerned in the Plot.

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Other Witneſſes depoſed, *Bolron* ſwore he would ruin Sir *Thomas Gaſcoigne*, and his Family; and Sir *Thomas Gaſcoigne*'s Groom depoſed, That *Thwyng* was not at his Houſe at the Time one of the Witneſſes depoſed he was there at a Conſult.

The Judges Direction.

Mr. Juſtice *Dolben*, in ſumming up the Evidence, directed the Jury to acquit *Preſſicks*, becauſe there was no Evidence againſt her, but of what ſhe had ſaid others were to do; and it did not appear ſhe was privy even to that: As to her ſaying ſhe was ſorry *Pickering* did not kill the King, *&c.* he did not think ſuch Words amounted to Treaſon: But as to *Thwyng*, there were two poſitive Witneſſes againſt him; and intimated, that he thought the Witneſſes *Thwyng* brought to invalidate the Teſtimony of *Bolron* and *Mowbray*, was not to be regarded.

Mr. Baron *Atkyns* obſerved, There was one Witneſs which depoſed, that *Preſſicks* confeſſed ſhe was privy to the Plot: And for *Thwyng*, there were two poſitive Witneſſes againſt him; and did not ſeem to give any Credit to the Witneſſes *Thwyng* produced to prove it a malicious Proſecution: Whereupon the Jury acquitted *Mary Preſſicks*; but brought in *Thwyng* GUILTY, and Sentence was paſſed on him as a Traytor: He was reprived from Time to Time, till the 23d of *October*, and then executed.

Preſſicks acquitted.

Thwyng convicted, and executed.

Remarks on Thwyng's *Trial.*

It ſeems a little ſtrange, that *Thwyng* ſhould be convicted, on the Teſtimony of Witneſſes, that were not believed at the Trial of Sir *Thomas Gaſcoigne*, who was charged with being at the ſame treaſonable Conſults, and made the ſame Defence that *Thwyng* did. This is aſcribed, in a great Meaſure, to the Credulity of the Judges that tried the unfortunate *Thwyng:* Mr. Juſtice *Dolben* was yet a Believer of the Plot; and Mr. Baron *Atkyns* a zealous Promoter of the Belief of it, and of every Thing elſe that might advance the Intereſt of the Faction; But the Government were ſo little ſatisfied of *Thwyng*'s Guilt, that they ſuſpended his Execution for three Months: However, the Parliament meeting in *October*, and a prevailing Faction ſeeming determined not to enter upon Buſineſs, unleſs the Perſons accuſed of the Popiſh Plot were proſecuted with the ſame Heat they were at firſt; the Miniſtry found themſelves under a kind of Neceſſity of ſuffering *Thwyng* to be executed, according to his Sentence, two or three Days after the Parliament met; though this Compliance was far from having the Effect the Court expected from it; and indeed it was the greateſt Blemiſh on that Adminiſtration, that they ſuffered Men to be put to Death, of whoſe Innocence they were but too well ſatisfied.

The

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The Trial of ELIZABETH CELLIER, for a *Miſdemeanor*, in publiſhing a Libel. 11 *Sept.* 1680. 32 *Car.* II.

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Cellier's 2d Trial. The Charge.

THE Indictment charges, that the ſaid *Elizabeth Cellier*, being a Papiſt, and deſigning to bring his Majeſty, and his Government, and the Proteſtant Religion into Contempt; and to aſperſe the Witneſſes that had teſtified againſt her, and others, indicted of High-Treaſon, did, on the firſt of *September*, in the 32d Year of the King, at the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, falſly, maliciouſly, and ſeditiouſly, write and publiſh a ſcandalous Libel, entitled, *Malice Defeated*, &c. wherein are contained many ſcandalous Expreſſions, reflecting on the Adminiſtration; particularly for ſuffering *Prance*, *Corral*, and others, to be threatned and tortured, to make them Witneſſes of the Popiſh Plot.

Evi-

The Witneſſes being called, it was unanſwerably proved, that Mrs. *Cellier* had acknowledged herſelf the Author of the Book, and had ſold and delivered them to ſeveral People, at her own Houſe.

To confute the Story of *Prance*'s being tortured in *Newgate*, *Prance* himſelf was called as a Witneſs at this Trial, who declared that he was never tortured; but Mr. *Richardſon*, the Keeper of *Newgate*, took great Care of him.

Corral, the Coachman, alſo was called; but he not appearing, his Wife was examined, and depoſed, That ſhe carried her Husband Proviſion when he was in *Newgate*; but was not permitted to ſee him while he was on the Maſter's Side: That about a Fortnight after, ſhe ſaw him with great Fetters on, which made her imagine he had murdered ſome Body; and the Jaylors ſaid they put on thoſe Irons to keep his Legs warm; and that there were many Holes in his Legs, as others could teſtify, who furniſhed her with Plaiſters for him: And Baron *Weſton* obſerving, that it was reported *Richardſon* had Irons, they called *Sheers*, that weighed forty Pounds, he anſwered, he had not one that weighed twelve Pounds; but did not contradict the Evidence *Corral*'s Wife gave: However, the Lord Mayor ſaid, *Corral* had denied all before him upon Oath.

Her Defence.

Mrs. *Cellier*'s Counſel deſerted her Cauſe, and ſaid nothing for her; but ſhe urg'd in her Defence, that ſhe was told what ſhe had wrote, and thought ſhe might juſtify the publiſhing it, ſince ſhe did not make the Story. She urged alſo, that her Family had been very Loyal, her Father and her Brother were both killed in one Day, in the Service of his Majeſty; and ſhe herſelf had ventured her Life by Sea and Land, to ſerve him, as his Majeſty had acknowledged.

To which Mr. Baron *Weſton* anſwered, No doubt his Majeſty had recompenced her, according to her Deſerts; but they muſt act by the Rules of Law: That the torturing Criminals was illegal, and he did not know it had been practiſed ſince the Reign of Queen *Elizabeth*, when *Campion*, the Jeſuit, was examined upon the Rack.

She is convicted.

The Jury finding her *Guilty*, Sir *George Jeffries*, the Recorder, pronounced the following Sentence on her, *(Viz.) That ſhe ſhould pay a Fine of* 1000 l. *be committed till Payment, ſtand three Times in the Pillory, and find Sureties for her good Behaviour for Life: That Part of the Books ſhould be burnt by the common Hangman in her View, and a Paper, containing her Offence, affixed to the Pillory*; which Sentence was afterwards executed.

Her Sentence.

Remarks.

Mrs. *Cellier*, it ſeems, was not able to prove all the Stories ſhe had heard, in relation to the threatening and torturing *Prance* and *Corral*, to make them Witneſſes of the Popiſh Plot; but Mr. *Echard*, to whom I refer the Reader, has given us a very full and particular Account of that Matter: And here we find *Corral*'s Wife atteſting, that ſhe was not permitted to ſee her Husband, in *Newgate*, a great while, and when ſhe was, ſhe found him loaded with Irons, and great Sores in his Legs, occaſioned by them; which is ſomething extraordinary, when the Man was neither charged with Treaſon or Felony, *Prance* alſo was diſtracted with the Uſage he met with, ſometimes ſwearing one Thing, and then another; now confeſſing, and then denying what he had teſtified, in the moſt ſolemn Manner: But what puts the Matter beyond all Doubt, was, the voluntary Confeſſion of *Prance* in the next Reign, when he declared, that all the material Parts of his Evidence, at the Trials of *Green*, *Berry*, and *Hill*, were abſolutely falſe, and the Effects of his Cowardiſe, having been tortured and threatened with Death, to make him accuſe thoſe innocent Men.

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The Trial of WILLIAM Viſcount STAFFORD, for *High-Treaſon*, before the Houſe of Lords, in *Weſtminſter-Hall*, (HENEAGE Lord FINCH, Lord Chancellor of *England*, being conſtituted Lord High Steward on this Occaſion) the 30th of *November*, 1680, 32 *Car.* II.

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Stafford's Trial.

The Articles againſt him.

THE Articles were entitled, *Articles of Impeachment, of High-Treaſon, and other Crimes and Offences, againſt* William *Earl of* Powis, William *Viſcount* Stafford, *and* Henry *Lord* Arundel *of* Ward-

our, William *Lord* Petre, *and* John *Lord* Bellaſis, *now Priſoners in the Tower of* London.

1. The firſt Article charges, That there had been for many Years a traitorous and execrable Conſpiracy carried on by the Pa-

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piſts, to ſubvert the ancient Government and Laws of this Kingdom, and to ſuppreſs the true Religion therein eſtabliſhed.

2. That the ſaid five Lords, together with *Philip Howard*, commonly called Cardinal of *Norfolk*, *Thomas White*, alias *Whitebread*, Provincial of the Jeſuits, and divers other Jeſuits, Prieſts, Friers, and other Perſons, had traitorouſly agreed, conſpired, and reſolved to depoſe and murder his preſent Majeſty, and by malicious and adviſed Speaking, Writing, and otherwiſe, had declared ſuch their Purpoſes and Intentions: That they had alſo conſpired and contrived to ſubject this Kingdom to the Pope, and ſhare among themſelves the Eſtates of his Majeſty's Proteſtant Subjects; to reſtore Religious Houſes and the Lands belonging to them, and to erect others, and to deprive all Proteſtant Biſhops and other Eccleſiaſtical Perſons of their Offices and Preferments.

3. That the ſaid Conſpirators and their Accomplices had held ſeveral Conſultations concerning the Inſtruments they ſhould uſe to murder his Majeſty, and had reſolved to effect it by poiſoning, ſhooting, ſtabbing, or ſuch like Means, and actually hired ſeveral Perſons to go to *Windſor*, and other Places where his Majeſty reſided, to murder him; and the Aſſaſſins had accepted the Rewards offered them, undertaken to do the Deed, and gone to thoſe Places for that Purpoſe.

4. That they had procured Forces to be raiſed, and made Application to the Pope, his Cardinals, Nuncios, and others, to obtain Supplies of Men, Money, Arms and Amunition, to levy War, and raiſe a Rebellion within this Kingdom, and to ſeize his Majeſty's Navy and Forts; whereupon the Calamities of War, Murders of innocent Subjects, Men, Women and Children, Burnings, Rapines, Devaſtations, and other dreadful Miſeries muſt have enſued.

5. That the Conſpirators had procured and accepted Commiſſions, granted by or under the Pope or other uſurped Authority, to raiſe Men, Money, Arms, and other Things neceſſary for their wicked and traiterous Deſigns, particularly, a Commiſſion for the ſaid *Henry* Lord *Arundel* of *Wardour*, to be Lord Chancellor; a Commiſſion to the ſaid *William* Earl of *Powis*, to be Lord Treaſurer; a Commiſſion to the ſaid *John* Lord *Belliaſis* to be General; another to the ſaid *William* Lord *Petre*, to be Lieutenant-General; and a Power to the ſaid *William* Viſcount *Stafford* to be Pay-maſter of the Army intended to be raiſed.

6. In order to conceal the Diſcovery of their Plots and Conſpiracies, and ſecure themſelves from Juſtice, the ſaid Conſpirators had uſed many wicked and diabolical Arts, cauſing their Prieſts to adminiſter Oaths of Secrecy together with the Sacrament, and upon Confeſſions, to give Abſolutions on concealing the ſaid Conſpiracy. That they cauſed Sir *Edmundbury Godfrey*, who had taken ſeveral Examinations relating to the ſaid Conſpiracy, to be murdered, giving out that he was alive, and privately married: And after his Body was found, maliciouſly reported that he murdered himſelf: which Murder was committed with Deſign to ſtifle and ſuppreſs the Evidence, and to deter all other Magiſtrates from making further Enquiries into their Plots and Conſpiracies.

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And laſtly, That they had contrived, by many falſe Suggeſtions, to lay the Imputation and Guilt of the aforeſaid horrid and deteſtable Crimes upon the Proteſtants, that thereby they might eſcape the Puniſhments they juſtly deſerved; expoſe the Proteſtants to great Scandal, and ſubject them to Perſecution and Oppreſſion in all Countries, where the Romiſh Religion was profeſſed.

Of all which Treaſons and Crimes, the Knights, Citizens, and Burgeſſes in Parliament aſſembled, did impeach the ſaid Lords, and every of them, in the Name of all the Commons of *England*, praying they might be put to anſwer the Premiſſes, and ſuch Trials and Judgments might be had thereupon, as was agreeable to Law and Juſtice, and the Courſe of Parliaments.

To which the Lord *Stafford* anſwered generally, that he was *not Guilty*, and the Commons replied, and joined Iſſue thereupon.

On the 30th of *November*, the Lords being come down from their Houſe to the Court erected in *Weſtminſter-Hall*, the Commons ſeated on each Side of them, all bare, and the Managers in the Rooms appointed for them; the Lord Viſcount *Stafford* was brought to the Bar, to whom the Lord High Steward made a Speech, wherein he told his Lordſhip, that he was proſecuted on the loud and dreadful Complaints of the Commons, and was to be tried by the whole Body of Peers, where he might be ſure no falſe Weights or Meaſures ever were, or could be found, but the Balance would be exactly kept, and all the Grains of Allowance his Caſe would bear, certainly put into the Scales; but as it was impoſſible their Lordſhips ſhould condemn the Innocent, ſo it was equally impoſſible they ſhould clear the Guilty: If therefore he had been agitated by a reſtleſs Zeal, to promote what they called the *Catholick Cauſe*, and had engaged in ſuch black and deep Deſigns he was charged with, and this ſhould be fully proved, he muſt expect to reap what he had ſown: And as he muſt hear with Patience what ſhould be ſaid againſt him, ſo he ſhould have Time to anſwer it, and have a very fair and equal Hearing.

Lord High Steward's Speech, at the Opening of the Trial.

The Charge being read, during which Time his Lordſhip was allowed to ſit, Mr. Serjeant *Maynard*, one of the Managers for the Commons, opened the Impeachment and Evidence. He obſerved that the Impeachment conſiſted of two Parts, a general and particular Charge: And accordingly they ſhould firſt prove a Plot in general, and then ſhew the Share the Lord at the Bar had in it: That great and wicked were the Deſigns of the Conſpirators: To deſtroy the King, in Hopes of better Times under his Succeſſor: To deſtroy and maſſacre all that ſtood in their Way, the whole Body of Proteſtants in *England*: That an Army at Home was in a Manner formed, Commanders appointed, and Aid from *France* invited and promiſed: They thought it meritorious, to deſtroy a Heretick King, and the Papiſts at home and abroad had broke through all the Bonds of Nature, and other Obligations, to obtain their

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their Ends. The Hiſtories of all Times and Countries, afforded Inſtances of ſuch Catholick Plots, and therefore there was no Improbability they ſhould be in one now, to propagate their Religion. Another Thing that might induce a Belief of the Plot, he obſerved, was the Murder of *Godfrey*, who had taken the Examinations of the Plot; and the many Endeavours to ſeduce and tamper with the Witneſſes, and blaſt their Characters, was a further Confirmation of it.

Sir *Francis Winnington*, another of the Managers, ſeconded Serjeant *Maynard*, and ſaid, he looked upon the Cauſe of that Day, to be the Cauſe of the Proteſtant Religion: That the Papiſts had great Advantages and Encouragements at that Time, to enter into this Conſpiracy: They had crept into the King's Councils: and though ſome of them had been detected and diſcharged, as ill Men had ſucceeded them.

Men were grown too eaſy and favourable to the Papiſts Projects; for, reconciling them to us was lately ſet on Foot.

The Miniſtry prevented the Execution of the Penal Laws againſt Papiſts, and turned them upon the Proteſtant Diſſenters, and by that Means weakened and divided the Proteſtant Intereſt.

But the greateſt Encouragement they had to enter on this Conſpiracy, was, the Proſpect of a Popiſh Succeſſor: His preſent Majeſty's Firmneſs to the Proteſtant Religion, fruſtrated all their Hopes of re-eſtabliſhing their Religion while he lived; and therefore, like true Papiſts, they would throw off all Obligations of Loyalty and Allegiance, and deſtroy him.

As to the Proof of the Plot in general, he thought the ſeveral Attainders of the Jeſuits, and the Convictions of *Reading*, and others, of tampering with the Witneſſes, a ſufficient Evidence of it: And as their Lordſhips Anceſtors had, by their Honour and Juſtice, preſerved the Anceſtors of the Commons, They did not doubt but their Lordſhips would tread in their Steps. They had now in their Hands an Opportunity of making their Zeal for Truth, and the Proteſtant Religion famous to Poſterity; and no Artifice could create the leaſt Jealouſy in them, that their Lordſhips would ſhew any Injuſtice to the Commons of *England*: To their Judgment, therefore, this Cauſe was ſubmitted; and when they had their Lordſhips Judgment, they did not doubt but they ſhould drive Popery out of this *Engliſh* World.

The King's Council open the Charge.

Mr. *Treby*, another of the Managers, obſerved, That their Evidence conſiſted of two Parts, 1. To ſhew the general Conſpiracy, and 2. The particular Share the Lord at the Bar had in it.

They had laid it in their Articles, That there was an execrable Plot carried on by Papiſts, and that the Conſpirators acted divers Parts, and in divers Places, beyond Sea as well as here: That this was an Enterprize too extenſive to be managed by a ſingle Nobleman, and therefore they would ſhew, firſt, That there was ſuch a grand and univerſal Deſign of Papiſts, in which this Lord was to co-operate his diſtinct Share; though, when they deſcended to Particulars, it would appear, that his Part had been great, and managed with Malice as great as any.

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Then the Managers called their Witneſſes; and firſt one *Smith*, who gave a general Account of the Plot: He depoſed, That he had been a Popiſh Prieſt, but was now turned Proteſtant; That he had lived in the College of the *Engliſh* Jeſuits at *Rome* five Years; and the Jeſuits in their Sermons and private Diſcourſes maintained, That the King of *England* was an Heretick, and that whoever would take him out of the Way, would do a Meritorious Act; that he underſtood at *Rome*, there was a Plot going forward to murder the King, and when he came to *England* he obſerved there was the ſame Deſign here; and *That it was common Talk all over the Country.*

Smith's *Evidence.*

Dugdale depoſed, That for fifteen or ſixteen Years paſt, there had been a Deſign to introduce Popery by Force of Arms upon the King's Death; but he heard nothing till of late of killing the King: That he had been at ſeveral Conſultations for taking off the King, and there had been a general Collection of Money for carrying on the Deſign; he had received five hundred Pounds at once, and paid it to *Ewers* the Jeſuit, for Arms received from beyond Sea: That the Lord *Aſton* and Sir *James Symonds*, were ordered to diſpoſe of Arms, which came from beyond Sea, to the Value of thirty thouſand Pounds; and he had heard the *French* King would furniſh a Body of Troops and other Supplies: That the Jeſuits Letters went through the Deponent's Hands for two Years, and he received one, the 14th of *October*, 1678, dated the 12th, which ſaid, *This Night* Godfrey *is diſpatched*; and the Reaſon he was taken off, *Ewers* told the Deponent, was, becauſe *Coleman* ſent the Duke of *York* Word he had diſcovered the whole Plot to him: That the Deponent himſelf contributed four hundred Pounds towards the Plot, and promiſed a hundred more: That the Lord *Stafford* was preſent at ſeveral Conſults, where the introducing Popery, the buying Arms, and the King's Death, were under Conſideration; and there was an Indulgence, publiſhed in the Year 1678, That whoever ſhould be active in theſe Deſigns, ſhould have a Pardon for all their Sins: That when the King was killed, Arms were to be put into the Hands of certain Perſons, who were to riſe at an Hour's Warning, and cut the Proteſtants Throats, and if any eſcaped, the Army was to deſtroy them; adding, that *Whitebread* the Jeſuit wrote *Ewers* a Letter by the common Poſt, wherein he deſired him, in Words at length, without a Cypher, *To provide ſtout Fellows to kill the King.*

Dugdale's *Evidence of the Plot in general.*

Oates depoſed, that he was reconciled to the Church of *Rome* on *Aſh-Wedneſday*, 1676, and admitted then a Novice of the Order of the Jeſuits: That in *April* 1677, he was ſent to *Spain*, where the King's Death was talked of, for that he was an Enemy to God and Man. In *November* following the Deponent was ordered to *England*, where he underſtood *Grove* had been diſappointed in his Deſign of killing the King; but had great Hopes of effecting it the next Year: That in *December*

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December 1677, the Deponent was ſent to *St. Omers*, where they received an Account of an Attempt that *Pickering* had made upon the King's Life, which failed by the Flint of his Piſtol being looſe: Then he gave Evidence of the treaſonable Conſult at the *White-Horſe* in *April*, 1678, as he had done at the Jeſuits Trials, and of Sir *George Wakeman*'s being employed to poiſon the King; and ſaid, *Strange* told him how *London* was fired, and that the Incendiaries who were apprehended, were releaſed by the Duke of *York*'s Order.

Jenniſon's *Evidence.*

Jenniſon depoſed, That *Ireland* would have employed him to murder the King; and that he (the Deponent) recommended four ſtout *Iriſhmen* to him in *Auguſt*, 1678, for that Service, whoſe Names *Ireland* took down.

The Managers having given Evidence of the Plot in general, the Witneſſes were directed to teſtify what they knew againſt the Lord *Stafford* in particular.

Dugdale's *Teſtimony againſt Lord* Stafford *in particular.*

Whereupon *Dugdale* depoſed, That the latter End of *Auguſt*, or the Beginning of *September*, 78, he was admitted to a Conſultation at the Lord *Aſton*'s Houſe, where the Lord *Stafford*, the Lord *Aſton*, and ſeveral more, came to a Reſolution, upon the Intelligence they had received from beyond Sea: That the ſpeedieſt Way to introduce their Religion was, to kill the King; to which Reſolution the Lord *Stafford* conſented: That ſoon after, the Lord *Stafford* ſent for the Deponent into his Chamber, and promiſed him five hundred Pounds, if he would be concerned in murdering the King: He ſaid, the Services of his Family had not been rewarded, which was Reaſon ſufficient for his Enmity to the King, if there was nothing of Religion in the Caſe. And he remembered particularly, that the Day, the Lord *Stafford* offered him the five hundred Pounds, was on the 20th, or 21ſt of *Sept.* 78.

Oates's *further Evidence.*

Oates depoſed, That in *June* 78, the Lord *Stafford* received a Commiſſion to be Pay-Maſter General of the Army, at *Fenwick*'s Chamber in *Drury-Lane*.

Turbervile's *Evidence.*

Turbervile depoſed, That in the Year 75, his Brother, being a *Benedictine* Monk, recommended him to the Lord *Stafford* at *Paris*, who was then lame of the Gout; and that his Lordſhip purpoſed to him his being concerned in the Murder of the King who was (he ſaid) an Heretick, and a Rebel to God Almighty; ordered the Deponent to go to *Diep*, and told him he ſhould go with him to *England*: But his Lordſhip wrote the Deponent Word at *Diep*, he ſhould go to *England* by Way of *Calais*, and ordered him to wait on his Lordſhip at *London*; but he never went near my Lord *Stafford*, not being willing to be concerned in the Matter: That it was at his Lordſhip's Houſe at *Paris*, that he propoſed killing the King; the Deponent was at his Houſe there, ſeveral Times, within the Space of a Fortnight. The Houſe was at the Corner of a Street, which faced *Luxemburgh-Houſe*, and the Prince of *Conde* lodged in the ſame Street.

This, the Lord *Stafford* obſerved, was not true, and demanded of *Turbervile*, What kind of Room his Chamber was, where he came to him? Which *Turbervile* ſaid he could not remember: And being asked how he came not to diſcover this ſooner? Said, He was afraid of having his Brains beat out; but on the King's Proclamation, and the Perſuaſion of his Friends, who told him he might do it ſafely, he made the Diſcovery.

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Lord Staf. ford's Defence.

The Lord *Stafford* proceeding in his Defence, ſaid, If ſome Doctors of the Church of *Rome* held the Doctrine of King-killing, the Doctors of the *Sorbonne*, and ſeveral other conſiderable Members of that Church, had condemned it, as he did for his Part; and that he had taken the Oath of Allegiance, with which he thought no Power on Earth could diſpenſe: Nor had his Life given any Countenance to the Accuſation of the perjured Villains, who ſwore againſt him: Declaring, that Offers of procuring his Pardon, had been made him, by ſeveral Peers, and Members of the Privy-Council, if he would make a Diſcovery: But upon the ſtricteſt Search he could not imagine there was any Foundation for the Charge againſt him; and obſerved, he had Time enough, after the Diſcovery of the Plot, to have made his Eſcape, if he had been guilty.

Then he demanded of *Dugdale*, What Proviſion of Arms was made to put this pretended Deſign in Execution? To which *Dugdale* anſwered, He heard there were 30,000 Arms provided beyond Sea; and he underſtood they ſhould have at leaſt 200,000 Men to aſſiſt them: Which his Lordſhip obſerved was very ſtrange, ſince there was not 20,000 *Roman* Catholicks in *England* able to bear Arms.

His Witneſſes called.

His Lordſhip alſo called ſeveral Witneſſes, who depoſed, That he was at the Marquis of *Worceſter*'s Seat, at *Badminton*, in *Auguſt* 78, when *Dugdale* ſwore he was at *Tixall*. And *Thomas Sawyer* depoſed, That *Dugdale* was forced to leave the Lord *Aſton*'s Service, on Account of his Debts; and that being taken up by the Watch, in *December* 78, he deſired the Parſon of the Town to prevail with the Lord *Aſton* to own him for his Servant; for he ſhould be undone (he ſaid) if he went to Jail; but the Lord *Aſton* would not own him: And *Dugdale* ſwore thereupon, That he would be revenged on the Lord *Aſton*; which was but two or three Days before he became an Evidence againſt the Lord *Aſton*, and the reſt of the Popiſh Lords.

The Miniſter of *Tixall* depoſed, That he begged of the Lord *Aſton* to own *Dugdale* for his Servant, to prevent his being carried to Jail; but his Lordſhip anſwered, he would have nothing to do with him.

Sir *Walter Bagott*, one of the Juſtices of Peace, before whom *Dugdale* was brought by the Watch, depoſed, That he waited on the Lord *Aſton*, to know if *Dugdale* was his Servant; but he would not own him: Whereupon the Deponent took *Dugdale* to *Stafford* with him, where there was a Meeting of Juſtices, and they tendred him the Oaths of Supremacy and Allegiance, which he took; and examining if he knew any Thing of the Plot, he denied he had any Knowledge of it: And Mr. *Kinnerſley*, and Sir *Thomas Whitgrave*, two more of the Juſtices of Peace, depoſed to the ſame Effect.

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The Miniſter of *Tixall* further depoſed, That whereas *Dugdale* had ſworn he received a Letter, concerning the Death of Sir *Edmondbury Godfrey*, dated the 12th of *October*, and communicated the ſaid Letter to the Deponent, and Mr. *Sambridge*, the *Tueſday* following; he, the Deponent averred, that he never heard of *Godfrey*'s Death, either from *Dugdale*, or any other Perſon, 'till it was publickly known. And Mr. *Sambridge* depoſed to the ſame Effect.

Robinſon and *Murrel* depoſed, That *Dugdale* would have ſuborned them to have been Witneſſes againſt ſeveral Gentlemen, to prove their being in the Plot, and particularly againſt the Lord *Stafford*.

Robinſon and *Holt* alſo depoſed, That *Dugdale* would have ſuborned them to be Witneſſes.

One of the Lord *Stafford*'s Servants depoſed, That he was with him all the while he reſided at *Paris*, and that his Lordſhip was never lame, as *Turbervile* had depoſed; neither did he ever hear that *Turbervile* was at his Lordſhip's Houſe at *Paris*.

Weyborne depoſed, That the Lord *Stafford* came over from *France*, by Way of *Diep*, in *January* 75, and not by *Calais*, as *Turbervile* had ſworn.

Several Witneſſes alſo depoſed, That *Turbervile* ſolemnly proteſted he knew nothing of the Plot.

Then his Lordſhip demanded of *Oates*, Whether he, when he was a Miniſter of the Church of *England*, did really turn Papiſt, or did but pretend to turn? To which *Oates* anſwered, *He did only pretend, and was not really one.*

His Lordſhip alſo deſired that *Oates* might produce ſome of the Letters he pretended to have received from his Lordſhip, or ſome Notes, or Abſtracts, he had taken from them; but *Oates* anſwered, he had not kept any of thoſe Letters, neither had he taken any Notes out of them, leſt they ſhould endanger his Life.

Whereupon his Lordſhip obſerved, That *Oates* could not be deemed a credible Witneſs, having acknowledged his Hypocriſy and Diſſimulation with God and Man.

That *Oates* alſo was ſo poor and neceſſitous, that he begged for Six-pence, ſuggeſting that he became an Evidence to ſave himſelf from ſtarving: To which *Oates* replied, He had not received Two-pence ſince he made the Diſcovery: Whereupon his Lordſhip obſerved, that *Oates* had ſworn at another Trial, that he had been ſeven hundred Pounds out of Pocket; which could not eaſily be, if he had received nothing. *Oates* anſwered, A noble Peer had made him a Preſent of an hundred Pounds; he ſold his Narrative of the Plot for another hundred Pounds; he had alſo received an hundred Pounds for taking of Jeſuits, and fifty Pounds more he had received for other Copies; all which and more he had ſpent in the Service. *(In promoting the Belief of the Plot.)*

His Lordſhip obſerved alſo, That *Dugdale* was in the Bailiffs Hands when he became an Evidence; and that he probably did it to obtain his Liberty, and entitle himſelf to the Reward that was offered to Diſcoverers.

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His Lordſhip alſo again inſiſted, That *Oates*, who had diſſembled with God Almighty to ſuch a Degree, as to take the Sacrament after the Manner of the Church of *Rome*, which their Lordſhips and the Houſe of Commons had declared to be groſs Idolatry, could never be looked upon as a good Witneſs; and appealed to their Lordſhips, if one, who pretended to abhor his own Religion, and had engaged to ſuch an Height, in a Way which his Conſcience told him was Idolatrous, was not a perjured Fellow, and incapable of being a Witneſs: He could be no Chriſtian, but a Devil, and a Witneſs for the Devil. Had he been a Penitent, they ſhould have diſcovered it by a pious, ſober, and peaceful Behaviour; and it was but laſt Night, when he abuſed the Lieutenant of the *Tower*, and called him Raſcal, which the Lieutenant atteſted to be true.

Witneſſes produced to ſupport the Credit of the King's Witneſſes.

Then the Managers produced other Evidence, to ſupport the Credit of their Witneſſes, and to falſify the Evidence given for the Priſoner.

Anſel depoſed, That he had ſeen *Dugdale* in the Lord *Aſton*'s Parlour with the Lord *Stafford*; and that *Dugdale* told him of the Death of a Juſtice of Peace in *London*, on *Monday* the 14th of *October* 78.

Mr. *Booth*, a Member of the Commons, depoſed, That *Robinſon*, a Witneſs of the Priſoner's, who pretended he was ſuborned by *Dugdale* was a common Cheat: Whereupon the Lord *Stafford* obſerved, he was the more likely to be ſuborned.

Other Witneſſes depoſed, That *Holt* and *Murrel*, who had depoſed they were ſuborned by *Dugdale*, were neceſſitous People: Others depoſed, that they had been practiſed with to deſtroy *Dugdale*'s Credit. They produced other Witneſſes, who depoſed that *Dugdale* lived in good Credit at the Lord *Aſton*'s, and tranſacted moſt of his Affairs; and ſome Witneſſes depoſed, that *Turbervile* waited at *Diep*, to come over with the Lord *Stafford*, and that he was at *Paris* when the Lord *Stafford* was there. Others depoſed, that the Lord *Stafford* had been lame ſeveral Times within the Space of ſeven Years; but his Lordſhip ſtill averred, that he had never been lame.

Other Witneſſes of the Lord Stafford's.

In anſwer to this Evidence, the Lord *Stafford* proved, that ſeveral of the Witneſſes produced againſt him, were active Men in the Grand Rebellion, and diſaffected to the Government; and then proceeded to make his Obſervations on the Evidence that had been given.

He obſerved, That *Dugdale*, the firſt Witneſs, had depoſed his Lordſhip was at *Tixall*, in *Auguſt* 78, which appeared to be falſe; and he thought a Man, who could ſwear falſe in one Thing, was not to be credited in any: That his Lordſhip's Witneſſes alſo had diſproved him in ſeveral other Parts of his Teſtimony, and ſhewed he had endeavoured to ſuborn People to ſwear againſt his Lordſhip.

That *Oates*'s ſwearing before the Lords, he had no more to ſay againſt any body, and afterwards

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terwards accuſing the Queen, and ſwearing his Lordſhip had a Commiſſion, was downright Perjury. And he obſerved *Oates* was ſo far from expreſſing any Repentance, or Concern, for his diſſembling ſo notoriouſly with God and Man, that he did, the Day before, with a ſmiling Countenance, and as it were in Deriſion own the monſtrous Offence; and though a wicked Man might be admitted a Witneſs, yet never did a wicked Man aver a Piece of Villainy, which he might have concealed, and boaſted of it, that was ever credited afterwards.

As to *Turbervile*, the next Witneſs, he thought it ſtrange, none of his Servants ſhould ſee him at *Paris*, if he had converſed with him a Fortnight together: Beſides *Turbervile*'s Knowledge of the Plot was but very lately, two Witneſſes having depoſed that he ſwore he knew nothing of it a Year ago.

He obſerved alſo, that none of the Witneſſes were Men of Quality, or Condition; but gave their Evidence to get Money, rather than for the ſake of Truth; and as *Oates* had diſſembled ſo notoriouſly with God and Man, no one would hang a Dog upon his Evidence: That the whole Courſe of his Life gave no Colour to the Charge; he challenged any one to ſay he had been guilty of one diſloyal Word or Act: He attended his Majeſty in the late Wars, till his Family was reduced to great Straits thereby; whereas, had he gone over to the Rebels, he might have lived quietly, and ſaved his Eſtate, as others did.

The Managers Obſervations on the Evidence.

Sir *William Jones* the Manager, who ſummed up the Evidence for the Commons, ſaid, he thought there were none now who would pretend to disbelieve the Plot, but thoſe who were Conſpirators in it, or wiſhed the Succeſs of it: That the Evidence was ſo ſtrong, it admitted of no Doubt, and the Crimes ſo foul, they needed no Aggravation. They were not only Offences againſt his Majeſty, but againſt the Proteſtant Religion; for the Extirpation of all Proteſtants out of theſe three Kingdoms; at leaſt all that dared to have continued ſo, muſt either have left their Country, or have been burnt in it.

Mr. *Powle*, another of the Managers, took upon him to anſwer the ſeveral Reaſons given by his Lordſhip of the great Improbability of his being in a Plot: And firſt, as to his Lordſhip's ſolemn Proteſtations of his Innocence, he ſaid, Whatever Regard their Lordſhips might have to the Proteſtations of a Peer in another Caſe; yet, now their Lordſhips ſat in the Seat of Juſtice, they would proceed according to the Evidence; and they hoped their Proofs were ſo clear, as to leave no room to believe his Lordſhip's ſolemn Proteſtations: And as to that Preſumption of his Innocence, that he did not fly for it, that might proceed as well from a Confidence of the Strength of his Party, as from a Confidence of his Innocence: and whether the Power and Prevalency of the Popiſh Party at that Time, might not reaſonably create ſuch a Confidence in this Noble Lord, he left to their Lordſhip's Judgment. That his Lordſhip had raiſed ſome Arguments from the whole Tenour of his Life, and had taken occaſion to mention his Own and his Anceſtors Services to his King and Country; but he deſired their Lordſhips on the other hand, to conſider that the Lord *Stafford* was a Roman Catholick; and as a miſguided Conſcience could engage the beſt Men in the worſt Actions, ſo he thought the Principles of that Religion were ſuch as were more likely to pervert Men from their Duty and Allegiance, than any other Religion or Perſuaſion whatever. His Lordſhip had affirmed indeed that the Doctrine of King-killing, and depoſing of Princes, was but a private Opinion: Whereas the moſt celebrated Writers of the Church of *Rome*, had publickly avowed and maintained that Doctrine. Some private Writers he acknowledged, did hold the contrary Opinion; but looked upon it as a Piece of Policy and Artifice in that Church, to leave this Point in ſome Meaſure undetermined, that they might make uſe of it as Occaſion ſerved. If it ſucceeded, then it was owned and juſtified; but if it miſcarried, then the Doctrine was ſaid to be a private Opinion, and the Plot, the Contrivance of particular Perſons, that were either deſperate or diſcontented; and concluded deſiring their Lordſhips to take the whole into their Conſideration, and do what ſhould be agreeable to Juſtice.

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Exceptions of the Lord Stafford's in Point of Law.

His Lordſhip then made ſome Objections in Point of Law, *(viz.)* 1. That there was no Precedent, that Criminal Proceedings ever continued from Parliament to Parliament, and this had continued three Parliaments.

2. That no Man ought to be proceeded againſt Capitally, but upon an Indictment found by ſome Grand Jury.

3. That there was no Overt-act laid in the Impeachment.

4. That the Witneſſes ſwore for Reward, and therefore were not competent Witneſſes.

5. That there were not two Witneſſes to any one Point.

Anſwered.

1. To the firſt it was anſwered, That what was once upon Record in Parliament, might at any Time be proceeded upon.

2. That in Impeachments of the Commons, an Indictment was not neceſſary.

3. To the Third, that it was charged, and had been proved, that he had received a Commiſſion, had been at ſeveral Conſults, and had hired Perſons to kill the King, which were ſufficient Overt-Acts.

4. To the Fourth, that it had been reſolved, That one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act, of the ſame Species of Treaſon, was ſufficient.

5. As to the Objection, that a Maintenance was allowed the Witneſſes; this every Man did, though perhaps he did not give ſo large an Allowance as the King gave; and if his Majeſty had been bountiful to his Witneſſes, what was that to the Commons, who were Proſecutors? He could ſhew no Bribery in them.

Lord Stafford convicted.

The Trial having continued ſix Days, their Lordſhips Votes were taken by the Lord High Steward on the 7th, when his Lordſhip declared, that Thirty-one of the Lords thought the Priſoner *Not Guilty*, and Fifty-five had found him GUILTY: And the Lieutenant of the

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the *Tower* being commanded to bring his Priſoner to the Bar, the Lord High Steward acquainted him, that their Lordſhips had found him Guilty of the Treaſons of which he was Impeached: After which, the Lords adjourning to their Houſe, and the Commons withdrawing to theirs, the Speaker of the Commons reſumed the Chair, and with the whole Body of the Houſe of Commons went up to the Lords Bar, and demanded Judgment againſt the Lord Viſcount *Stafford*.

Motion to alter the Sentence.

The Commons being withdrawn, it was moved, that the Lord *Stafford* might have Judgment to be beheaded only, but the Opinion of the Judges being demanded as to the Conſequence of ſuch a Sentence: They anſwered that the Judgment in High-Treaſon was to be drawn, hanged, and quartered, and the Courts below could not take Notice of any other Judgment for High-Treaſon. Sir *Creſwel Levinz* the Attorney General alſo, ſaid, that if any other Judgment was given, it would be prejudicial to his Majeſty, Whereupon the Lords reſolved, that the uſual Sentence in High-Treaſon ſhould be pronounced, and a Meſſage was ſent to the Commons, that their Lordſhips would go forthwith into *Weſtminſter-Hall*, to give Judgment againſt *William* Lord Viſcount *Stafford*.

Lord High Steward's Speech before Sentence.

The Lords and Commons being returned to their Places in *Weſtminſter-Hall*, and the Priſoner brought to the Bar, the Lord High Steward (Lord Chancellor *Finch*) made a Speech upon the Occaſion; wherein, having anſwered ſome trifling Objections Lord *Stafford* made in Arreſt of Judgment, he ſaid:

" My Part, therefore, which remains, is a " very ſad one; for I never yet gave Sen- " tence of Death upon any Man, and am " extreamly ſorry that I muſt begin with " your Lordſhip.

" Who would have thought that a Perſon " of your Quality, of ſo noble an Extraction, " of ſo conſiderable an Eſtate and Fortune, " ſo eminent a Sufferer in the late ill Times, " ſo intereſted in the Preſervation of the Go- " vernment, ſo much obliged to the Mode- " ration of it, and ſo perſonally obliged to " the King and his Royal Father, for their " particular Favours to you, ſhould ever have " entered into ſo infernal a Conſpiracy, as to " contrive the Murder of the King, the Ruin " of the State, the Subverſion of Religion, " and, as much as in you lay, the Deſtructi- " on of all the Souls and Bodies in three " Chriſtian Nations? And yet the Impeach- " ment of the Houſe of Commons amounts " to no leſs a Charge; and of this Charge " their Lordſhips have found you guilty.

" That there hath been a general and deſ- " perate Conſpiracy of the Papiſts, and that " the Death of the King hath been all along " one chief Part of the Conſpirators Deſign, " is now apparent, beyond all poſſibility of " doubting.

" What was the Meaning of all thoſe Trea- " tiſes, publiſhed about two Years ago, a- " gainſt the Oath of Allegiance, in a Time, " when no Man dreamt of ſuch a Contro- " verſy? What was the Meaning of Father " *Conyer*'s Sermon, upon the ſame Subject; " but only becauſe there was a Demonſtra- " tion of Zeal, as they call it, intended a- " gainſt the Perſon of the King, which the " Scruples ariſing from the Oath did ſome- " what hinder?

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" To what Purpoſe were all the Correſ- " pondencies with foreign Nations? The " Collections of Money among the Fathers " Abroad and at Home? What was the " Meaning of their governing themſelves " here, by ſuch Advices as came frequently " from *Paris*, and *St. Omers*? And how " ſhall we expound that Letter which came " from *Ireland*, to aſſure the Fathers here, " that all Things were in a Readineſs there " too, as ſoon as the Blow was given?

" Does any Man now doubt how *London* " came to be burnt? Or by what Ways and " Means poor Juſtice *Godfrey* fell? Is it not " apparent, by theſe Inſtances, that ſuch is " the frantick Zeal of ſome bigotted Papiſts, " that they reſolve, no Means to advance the " Catholick Cauſe ſhall be unattempted, " though it be by Fire and Sword?

" My Lord, as the Plot in general is moſt " manifeſt, ſo your Lordſhip's Part in it is " but too plain; what you did at *Paris*, and " continued to do at *Tixall*, ſhews a ſettled " Mind and Purpoſe againſt the King: And " what you ſaid at *London*, touching honeſt " *Will*, ſhews you were concerned in that " Conſpiracy againſt the King's Life, which " was carrying on here too: And in all this " there was a great Degree of Malice; for " your Lordſhip, at one Time, called the " King *Heretick, and Traytor to God*; and, at " another Time, you reviled him for miſpla- " cing his Bounty, and rewarding none but " Traytors and Rebels.

" And thus you ſee, what the Wiſe Man " forewarned you of, is come upon you, *Curſe " not the King, no not in thy Heart; for the " Birds of the Air ſhall reveal, and that which " hath Wings will declare the Matter.*

" Three Things I ſhall preſume to recom- " mend to your Lordſhip's Conſideration. In " the firſt Place, your Lordſhip now ſees how " it hath pleaſed Almighty God to leave you " ſo far to yourſelf, that you are fallen into " the Snare, and into the Pit, into that very " Pit, which you were digging for others. " Conſider therefore, that God Almighty ne- " ver yet left any Man, who did not firſt " leave him.

" In the next Place, think a little better of " it than hitherto you have done; what kind " of Religion that is, in which the blind " Guides have been able to lead you on, in- " to ſo much Ruin and Deſtruction, as is now " like to befal you.

" In the laſt Place, I intreat your Lordſhip " to conſider, that true Repentance never " comes too late. A devout, penitential Sor- " row, joined with an humble and hearty " Confeſſion, is of mighty Power and Effi- " cacy, both with God and Man.

" There have been ſome, of late, who " have refuſed to give God the Glory of his " Juſtice, by acknowledging the Crimes, for " which they were condemned; nay, who have " been taught to believe, that it is a mortal

" Sin

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" Sin to confeſs that Crime in publick, for " which they have been abſolved in private; " and ſo have not dared to give God that " Glory, which otherwiſe they would have " done.

" God forbid your Lordſhip ſhould reſt " upon Forms; God forbid your Lordſhip " ſhould be found amongſt the Number " of thoſe poor miſtaken Souls, whom the " firſt Thing that undeceives is Death itſelf.

" Perhaps, your Lordſhip may not much " eſteem the Prayers of thoſe, whom you " have long been taught to miſcall Hereticks: " But, whether you do or no, I am to aſſure " your Lordſhip, That all my Lords here " even they that have condemned you, will " never ceaſe to pray for you, that the End " of your Life may be Chriſtian and Pious, " how tragical ſoever the means are that muſt " bring you thither. And now, my Lord, " this is the laſt Time that I can call you my " Lord; for the next Words I am to ſpeak " will attaint you.

" The Judgment of the Law is, and this " Court doth award, That

You go to the Place from whence you came; from thence you muſt be drawn upon a Hurdle to the Place of Execution: When you come there, you muſt be hanged up by the Neck, but not till you are dead; for you muſt be cut down alive, your Privy-Members muſt be cut off, and your Bowels ripped up before your Face, and thrown into the Fire: Then your Head muſt be ſevered from your Body, and your Body divided into four Quarters; and thoſe muſt be at the Diſpoſal of the King. And God Almighty be merciful to your Soul.

His Majeſty being pleaſed to remit all the Puniſhment but the Beheading, Writs were iſſued out of *Chancery*, to the Lieutenant of the *Tower*, and the Sheriffs of *London* and *Middleſex*, for the Execution of his Lordſhip on *Tower-Hill*, on the 29th of *December*, 1680, by ſevering his Head from his Body: But the Lord *William Ruſſel*, and ſome other Members of the Commons, queſtioning his Majeſty's Power of remitting any part of the Puniſhment, put the Sheriffs upon preſenting the following Petition to the Temporal Lords, *Viz.*

A Petition for Directions as to Lord Stafford's *Execution.*

To the Right Honourable the Lords Temporal in Parliament aſſembled, the humble Petition of Slingsby Bethel, *Eſq; and* Henry Corniſh, *Eſq; Sheriffs of* London *and* Middleſex.

Sheweth,

THAT your Petitioners have received a Writ, under the Great Seal of *England*, reciting, that Judgment had been given by your Lordſhips, againſt *William* Viſcount *Stafford*, for High-Treaſon, and divers other Crimes and Offences, upon the Impeachment of the Commons in Parliament aſſembled, and commanding your Petitioner to cauſe the ſaid Viſcount *Stafford*'s Head to be ſevered from his Body, upon the 29th Day of this Inſtant *December*, notwithſtanding any Judgment, Law, Ordinance, or Command to the contrary.

That your Petitioner have not, as yet received any Command from your Lordſhips for executing the ſaid Judgment. 1680. 32 Car. II.

May it therefore pleaſe your Lordſhips to take the Premiſes into Conſideration, and to make ſuch Order therein, as ſhall be agreeable to Right and Juſtice: And your Petitioners ſhall always pray, *&c.*

Upon which Petition the Lords made the following Declaration, *Viz.*

Die Martis, 21 *Decembris*, 1680.

Upon Application from the Sheriffs of *London* and *Middleſex*, making ſome Scruples concerning the Execution of the late Lord Viſcount *Stafford*, which were found by this Houſe to be unneceſſary, This Houſe do declare that the King's Writ ought to be obeyed.

Notwithſtanding which Declaration, the Sheriffs applied themſelves to the Houſe of Commons, for their Direction; whereupon the Commons paſſed the following Vote.

Die Jovis, 23 *Decembris*, 1680.

Reſolved, *&c.* That this Houſe *is content.* That the Sheriffs of *London* and *Middleſex* do execute *William* late Viſcount *Stafford*, by ſevering his Head from his Body only.

Some Paſſages with Lord Stafford lay under Sentence of Death.

Biſhop *Burnet* relates, that he attended the Lord *Stafford* in the *Tower*, while he lay under Sentence of Condemnation, and that he made ſolemn Proteſtations of his Innocence. He had a Mind to live, if it was poſſible; but ſaid, he could diſcover nothing relating to the King's Life, and proteſted, *That there was not ſo much as any Intimation, concerning it, ever paſſed amongſt them.* That the Lords *Eſſex* and *Ruſſel*, and Sir *William Jones*, afterwards ſent him *(Burnet)* to acquaint the Lord *Stafford*, that if he would diſcover all he knew of the Papiſts Deſigns, and more particularly what he knew concerning the Duke of *York*, they would not inſiſt on his confeſſing the particulars, for which he was condemned: And on the Lord *Stafford*'s promiſing to diſcover all he knew, he was brought before the Houſe of Lords, where he gave a long Relation of the Conſultations of the Papiſts, after the Reſtoration; wherein they agreed, that their Religion could not be better brought in, than by procuring a Toleration; but upon naming the Earl of *Shaftesbury* among thoſe who had undertaken to procure a Toleration, the Lords would hear no more, but ordered him to withdraw: And being ſent back to the *Tower*, he prepared himſelf to ſuffer, which he did with a conſtant, undiſturbed Mind. He ſupped and ſlept well the Night before his Execution, and died without any Shew of Fear or Diſorder, denying all that the Witneſſes had ſworn againſt him. *Thus far Biſhop* Burnet: But becauſe ſome may deſire to ſee the Speech entire, which

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which the Lord *Stafford* made at his Execution, I have inſerted it *verbatim*.

The Lord Viſcount Stafford's *Speech on the Scaffold, the 29th of* December, 1680.

Lord Stafford's Speech on the Scaffold.

By the Permiſſion of Almighty God, I am this Day brought hither to ſuffer Death, as if I were guilty of High-Treaſon. I do moſt truly, in the Preſence of the Eternal, Omnipotent, and All-knowing God, proteſt upon my Salvation, that I am as Innocent, as it is poſſible for any Man to be, ſo much as in a Thought, of the Crimes laid to my Charge.

I Acknowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long Time to prepare my ſelf for Eternity. I have not made ſo good Uſe of that Grace, as I ought to have done, partly by my not having ſo well recollected myſelf as I might have done, and partly becauſe not only my Friends, but my Wife and Children have for ſeveral Days been forbidden to ſee me, but in the Preſence of one of my Wardens. This hath been a great Trouble and Diſtraction to me; but I hope God of his infinite Mercy will pardon my Defects, and accept of my good Intentions.

Since my long Impriſonment, I have conſidered often, what could be the original Cauſe of my being thus accuſed, ſince I knew myſelf not culpable, ſo much as in a Thought: And I cannot believe it to be upon any other account, than my being of the Church of *Rome*. I have no Reaſon to be aſhamed of my Religion; for it teacheth nothing but the right Worſhip of God, Obedience to the King, and due Subordination to the Temporal Laws of this Kingdom. And I do ſubmit to all Articles of Faith, believed and taught in the Catholick Church; believing them to be moſt conſonant to the Word of God: And whereas it hath ſo much, and often, been objected, That the Church holds, that Sovereign Princes, excommunicated by the Pope, may, by their Subjects, be depoſed or murdered. As to the Murder of Princes, I have been taught, as a Matter of Faith in the Catholick Church, that ſuch Doctorine is diabolical, horrid, deteſtable, and contrary to the Law of God, Nature, and Nations; and as ſuch, from my Heart, I renounce and abominate it. As for the Doctrine of depoſing Princes, I know ſome Divines of the Catholick Church hold it, but as able and learned as they have written againſt it: But it was not pretended to be the Doctrine of the Church, that is, any Point of Catholick Faith: Wherefore I do here, in my Conſcience, declare, that it is my true and real Judgment, That this ſame Doctrine of depoſing Kings, is contrary to the fundamental Laws of this Kingdom, injurious to Sovereign Power, and conſequently would be in me, or any other of his Majeſty's Subjects, impious and damnable. I believe and profeſs that there is one God, one Saviour, one Holy Catholick Church, of which, through the Mercy, Grace, and Goodneſs of God, I die a Member. To my great and unſpeakable Grief I have offended God in many Things, by many great Offences; but, I give him moſt humble Thanks, not in any of thoſe Crimes of which I was accuſed.

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All the Members of either Houſe having Liberty, to propoſe in the Houſe, what they think fit for the Good of the Kingdom, accordingly I propoſed what I thought fit: The Houſe is Judge of the Fitneſs or Unfitneſs of it; and I think I never ſaid any thing that was unfitting there, or contrary to the Law, and Uſe of Parliament; for certainly if I had, the Lords would, as they might, have puniſhed me: So I am not culpable before God or Man.

It is much reported of Indulgencies, Diſpenſations, and Pardons, to murder, rebel, lie, forſwear, and commit ſuch other Crimes, held and given in the Church. I do here profeſs, in the Preſence of God, I never learnt, believed or practiſed any ſuch thing, but the contrary; and I ſpeak this without any Equivocation, or Reſervation whatſoever: And certainly, were I guilty, either myſelf, or knew of any one that were guilty, of any of thoſe Crimes, of which I am accuſed, I were not only the greateſt Fool imaginable, but a perfect Madman, and as wicked as any of thoſe that have ſo falſly accuſed me, If I ſhould not diſcover any ill Deſign, I knew in any kind, and ſo upon Diſcovery ſave my Life; I have ſo often had fair Occaſions propoſed to me, and ſo am guilty of Self-murder, which is a moſt grievous and heinous Sin. And though I was at laſt impeached at the Lords Bar, yet I have great Grounds to believe, that I was firſt brought to a Trial, on a Belief that to ſave my Life, I would make ſome great Diſcovery: And truly ſo I would, had I known any thing of an ill Deſign, or dangerous Plot, either of myſelf, or any other Perſon: But had I a thouſand Lives, I would loſe them all, rather than falſly accuſe either myſelf, or any other whatſoever. And if I had known of any Treaſon, and ſhould thus deny it, as I do now upon my Salvation, at this Time, I ſhould have no Hope of Salvation, which now I have, through the Merits of Chriſt Jeſus.

I do beſeech God to bleſs his Majeſty, who is my lawful King and Sovereign, whom I was always, by all Laws, Human and Divine, bound to obey; and I am ſure that no Power upon Earth, either ſingly, or all together, can legally allow me, or any Body elſe, to lift up a Hand againſt him, or his legal Authority. I do hold that the Conſtitution of the Government of this Kingdom, is the only Way to continue Peace and Quietneſs, which God long continue.

Next to Treaſon I hold Murder in Abhorrence, and have ever done, and do; and I do ſincerely profeſs, that if I could at this Time free myſelf immediately, and eſtabliſh what Religion I would, and what Government I would, and make myſelf as great as I could wiſh, and all by the Death of one of theſe Fellows, that by their Perjuries have brought me to the Place where I am, I ſo much abhor to be the Cauſe of any Man's Death, that I would not any ways be the Cauſe of their Murder; how much leſs would I endeavour the Aſſaſſination of his Majeſty, whom I hold to be as gracious a King, as ever

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this, or any other Nation had, and under whom the People may enjoy their Liberties as much as ever any did: And if it pleaſe God to grant him Life and Happineſs, according as I have always wiſhed and prayed for, I am morally perſuaded that he, and all his Dominions, will be as happy and proſperous, as ever People were; which I beſeech God to grant.

I do moſt humbly ask Pardon of the Almighty, and All-merciful God, for all the great Offences I have committed againſt his Divine Majeſty; and I know he would not have the Death and Confuſion of a Sinner, but that he may repent and live: In that Aſſurance I hope, knowing he never deſpiſeth a contrite Heart; and though I have not ſo feeling a Contrition as I would, yet I have it as well as I can; and I doubt not but that God will accept of the good Will.

I do deſire all People will forgive me any Injury that I have done them, in any Thing, either wilfully, or by Chance; and I do heartily forgive all People in this World, that have injured me: I forgive even thoſe perjured Men, that have ſo falſly brought me hither by their Perjuries.

I do now, upon my Death and Salvation, aver, that I never ſpoke one Word either to *Oates* or *Turbervile*, or to my Knowledge ever ſaw them until my Trial: And for *Dugdale*, I never ſpoke to him of any Thing, but about a Foot-boy, or Foot-man, or Foot-race, and never was then alone with him: All the Puniſhment I wiſh them, is, that they may repent, and acknowledge the Wrong that they have done me; then it will appear how innocent I am. God forgive them! I have a great Confidence that it will pleaſe Almighty God, in a ſhort time, to bring Truth to Light; then you and all the World will ſee and know what Injury they have done me.

I hope that I have made it appear that I have ſome Conſcience; for if I had none, certainly I would have ſaved my Life by acknowledging myſelf guilty; which I could have done, though I know I am not in the leaſt guilty. And I having ſome Conſcience, make very ill Uſe of it; for I throw my ſelf into eternal Pain, by thus plainly and conſtantly denying at my Death the Knowledge of what I am accuſed of.

I have ſaid thus much to diſcharge my Conſcience; and do aver, upon my Salvation, what I have ſaid to be really true.

I ſhall ſay little of my Trial; and whether it were all according to the known Law, I am too much a Party to ſay much of it: God forgive him or them that were the Cauſe of it.

My Judges were all Perſons of Honour, who were all as much bound to judge rightly, as if they had been upon Oath, upon what was legally proved; and not to vote but as in their Conſciences they were ſatisfied; and if any of them did otherwiſe, upon any Account whatſoever, I beſeech God to forgive him; I do heartily.

I ſhall end with my Prayers for the Happineſs of his Majeſty, That he may enjoy all Happineſs in this World and the World to come; and govern his People according to the Laws of God; and that the People may be ſenſible what a Bleſſing God hath ſo miraculouſly given them, and obey him as they ought. I ask Pardon with a proſtrate Heart of Almighty God, for all the great Offences that I have committed againſt his Divine Majeſty; and hope, through the Merits and Paſſion of Chriſt Jeſus, to obtain everlaſting Happineſs, into whoſe Hands I commend my Spirit, asking Pardon of every Perſon that I have done any Wrong to. I do freely forgive all that have wronged me: I do with all the Devotion and Repentance that I can, humbly invoke the Mercy of our Bleſſed Saviour.

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I beſeech God not to revenge my innocent Blood upon the Nation, or on thoſe that were the Cauſe of it, with my laſt Breath. I do with my laſt Breath truly aſſert my Innocency; and hope the Omnipotent, All-ſeeing, juſt God will deal with me accordingly.

He is beheaded.

The Lord *Stafford* having ſpent ſome Time in his Devotions, undreſſed himſelf, and ſubmitted to the Block: And the Executioner ſevered his Head from his Body at one Blow. The Head was received into a black Silk Scarf by two of his Friends; but the Sheriffs ordered the Executioner to take it and hold it up to the View of the People, which he did at the four Corners of the Scaffold, crying out, *This is the Head of a Traytor.*

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The Sun (according to one of the *Spectators*) which before was obſcured, on a ſudden broke out, and diſplayed his illuſtrious Beams; upon which Accident the different Parties made different Reflections. His Adverſaries ſaid, The Sun, which before frowned on Popiſh Guilt, ſeemed pleaſed when Juſtice was done: But the Papiſts would have it, That the Heavens mourned, and were aſhamed at the ſhedding his innocent Blood; but appeared in Joy and Splendour at the Reception of this Saint into the Celeſtial Manſions. But to leave theſe fond Conjectures; the Head being returned to his Relations, was laid in a Coffin with the Body, and carried from the Scaffold to the *Tower*, to be interred.

Remarks on Lord Stafford's Trial and the Popiſh Plot.

Such a Multitude of Witneſſes ſpringing up from all Quarters, and giving Evidence of the Popiſh Plot, enclined moſt Men to believe there was ſomething in it, for a conſiderable Time: But when it became manifeſt, that the Faction only trumped up this Plot to diſtreſs the Government, and conceal one of their own, againſt that very Life, and that very Conſtitution they charged the Papiſts with attempting to deſtroy; when it was conſidered, what extraordinary Rewards were offered to thoſe that would become Witneſſes of it, and what infamous People the Witneſſes in general were; when it was diſcovered how they were inſtructed and managed by *Shaftesbury* and his Emiſſaries, to deſtroy and aſperſe all that were true Friends to the Government and the Conſtitution; when it was obſerved how they contradicted themſelves, and each other, in their Evidence; and atteſted ſuch improbable and inconſiſtent Relations as the moſt Credulous could not believe: But above all, when it was found that the Party were actually arming themſelves, reviling

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reviling the King and Royal Family; justifying the late Rebellion, and threatning publickly to bring the King to the Block, as they did his Father, (as appeared at the Time of the *Oxford* Parliament, and at *Colledge*'s Trial, which happened within a Year after this); when the People, I say, reflected on these Things, the Belief of the Plot vanished at once; and was believed, or pretended to be believed, by none but those whose Interest it was it should be believed; and who endeavoured, by asserting the Truth of the Popish Plot, to conceal their own Guilt.

Even Bishop *Burnet*, in his Posthumous Work, Vol. II. pag. 509. could say in his Remarks on *Colledge*'s Trial: "And now "*Dugdale* and *Turbervile*, who had been the "Witnesses upon whose Evidence Lord *Stafford* was condemned, being within a Year "detected, or at least suspected of this Villany; *I could not but reflect on what he had "said to me, That he was confident I should "see within a Year, That the Witnesses would "be found to be Rogues.*

And indeed the Faction themselves, and the Authors of *Rapin*, their avowed Advocates, seem strangely inconsistent in their Accounts of the pretended Popish Plot: They first represent the King using all manner of Artifice, and even confederating with the *French* King to establish Popery in *England*; and then, on a sudden, make the *English* Papists, and all the Popish Powers in *Europe*, in a Plot, (even that very *French* King, by whose Means, they told us, King *Charles* would introduce Popery here) to take away the Life of King *Charles* II. because he was a Heretic, and opposed their Schemes of introducing Popery: And when the Absurdity of this was sufficiently exposed, then they turn about again, and tell us, that the King himself was more deeply engaged in the Plot than any Man: Not in a Plot to kill himself for a Heretick; (This was too absurd, even for a Fanatick to say) but in a Plot to establish Popery by a Standing Army, and the Assistance of the *French* King again. So that they seem contented, at length, that we should believe no more of the Plot than that King *Charles* II. the Papists, and the Members of the Church of *England*, who are ever represented as Popishly affected, were in a Plot to bring in Popery: But then they would do well to consider, what has been observed already, that if this last Pretence be admitted, all the People that were executed for being in a Plot against the King's Life were unjustly murdered under a Colour of Law; for they were all condemned *for conspiring the Death of the King*. Had they been only charged with *Compassing and Imagining, or Conspiring*, with or without the King's Concurrence, *to alter the Government and the Established Religion*; This was not High-Treason by any Law then, or now, in being; provided they had no Designs against the King's Person, as this Scheme admits.

And because it may seem impossible to Posterity, that any Party of Men could have the Face, or the Folly, to affirm such palpable Contradictions, I shall extract some Passages from *Rapin* (whose Authority they will never dispute, his pretended History being little else but a Collection of all the Lies and Forgeries the Faction have, from Time to Time, advanced to serve their Ends) that will sufficiently manifest this Conduct.

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Rapin, Vol. 13, Page 381, *Tindal*'s Translation, says, "That the Papists, (*Anno* 1667) "had a great Influence in the Court: The "Earl of *Arlington*, the almost declared Protector of the Papists, was made Secretary "of State, and in great Favour; while the "Earl of *Clarendon*, their Enemy, daily declined in Credit and Authority. This began "to produce Suspicions little advantagious "to the King. Page 422, *Rapin* says of the "King, *Instead of being zealous for the Protestant Religion* (Anno 1670) *his Intent "was to overturn it:* Instead of having any "Thought of destroying the Presbyterians, "his Design was to be very indulgent to "them, in order to have an Opportunity and "Pretence to be so to the Papists: *He was "impatient to free himself from the Restraints "put upon him by his Parliament; and the "rather, as by the Augmentation of his Power "he should be more able to countenance the "Papists, and introduce their Religion; which "was his own as well as his Brother's.*

Page 458, *Rapin* says, "One of the Branches of the Project formed by the Cabal "(*Anno* 1671) was, to render the King absolute; and this Branch comprehended under "it, *The Extirpation of the Protestant, or, at "least, the Introduction of the Popish Religion.*

Vol. 14, Page 41 and 42, *Rapin* says, "It "signified little for the King to protest his "Zeal for the Protestant Religion, (*Anno* "1673): These Protestations could not make "the Parliament forget so many Steps already "taken, which gave too just a Suspicion of "his Sincerity: And they openly enough expressed their Fears and Discontents *of the "Growth of Popery, publickly encouraged by "the Court*; of the Management of Affairs "in *Ireland*, where the Act of Establishment "was openly trampled upon, and *Papists "daily advanced or encouraged*; the King's "Proceedings in *England*, which were clear "Evidences of his Principles and Designs; "namely, his raising a Land Army without "any Necessity; his granting Liberty of "Conscience by his sole Authority; his shutting up the Exchequer; and *entering into a "strict Alliance with* France, when he should "have used his utmost Endeavours to oppose "the Encrease of her Greatness: The Profession of the Popish Religion, in the most "open Manner, by the Duke of *York*; and "his Marriage with a Popish Princess, abetted by the King himself, contrary to so "many Remonstrances of the Parliament. "These were Subjects of Complaint, too "real to be silenced by Protestations from "the King, of his Design to maintain their "Laws and Religion.

Page 43, He tells us, "*The King had abjured the Protestant Religion, and had a "secret Chapel erected in his Palace, where "he every Day heard Mass.*

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this, or any other Nation had, and under whom the People may enjoy their Liberties as much as ever any did: And if it pleaſe God to grant him Life and Happineſs, according as I have always wiſhed and prayed for, I am morally perſuaded that he, and all his Dominions, will be as happy and proſperous, as ever People were; which I beſeech God to grant.

I do moſt humbly ask Pardon of the Almighty, and All-merciful God, for all the great Offences I have committed againſt his Divine Majeſty; and I know he would not have the Death and Confuſion of a Sinner, but that he may repent and live: In that Aſſurance I hope, knowing he never deſpiſeth a contrite Heart; and though I have not ſo feeling a Contrition as I would, yet I have it as well as I can; and I doubt not but that God will accept of the good Will.

I do deſire all People will forgive me any Injury that I have done them, in any Thing, either wilfully, or by Chance; and I do heartily forgive all People in this World, that have injured me: I forgive even thoſe perjured Men, that have ſo falſly brought me hither by their Perjuries.

I do now, upon my Death and Salvation, aver, that I never ſpoke one Word either to *Oates* or *Turbervile*, or to my Knowledge ever ſaw them until my Trial: And for *Dugdale*, I never ſpoke to him of any Thing, but about a Foot-boy, or Foot-man, or Foot-race, and never was then alone with him: All the Puniſhment I wiſh them, is, that they may repent, and acknowledge the Wrong that they have done me; then it will appear how innocent I am. God forgive them! I have a great Confidence that it will pleaſe Almighty God, in a ſhort time, to bring Truth to Light; then you and all the World will ſee and know what Injury they have done me.

I hope that I have made it appear that I have ſome Conſcience; for if I had none, certainly I would have ſaved my Life by acknowledging myſelf guilty; which I could have done, though I know I am not in the leaſt guilty. And I having ſome Conſcience, make very ill Uſe of it; for I throw my ſelf into eternal Pain, by thus plainly and conſtantly denying at my Death the Knowledge of what I am accuſed of.

I have ſaid thus much to diſcharge my Conſcience; and do aver, upon my Salvation, what I have ſaid to be really true.

I ſhall ſay little of my Trial; and whether it were all according to the known Law, I am too much a Party to ſay much of it: God forgive him or them that were the Cauſe of it.

My Judges were all Perſons of Honour, who were all as much bound to judge rightly, as if they had been upon Oath, upon what was legally proved; and not to vote but as in their Conſciences they were ſatisfied; and if any of them did otherwiſe, upon any Account whatſoever, I beſeech God to forgive him; I do heartily.

I ſhall end with my Prayers for the Happineſs of his Majeſty, That he may enjoy all Happineſs in this World and the World to come; and govern his People according to the Laws of God; and that the People may be ſenſible what a Bleſſing God hath ſo miraculouſly given them, and obey him as they ought. I ask Pardon with a proſtrate Heart of Almighty God, for all the great Offences that I have committed againſt his Divine Majeſty; and hope, through the Merits and Paſſion of Chriſt Jeſus, to obtain everlaſting Happineſs, into whoſe Hands I commend my Spirit, asking Pardon of every Perſon that I have done any Wrong to. I do freely forgive all that have wronged me: I do with all the Devotion and Repentance that I can, humbly invoke the Mercy of our Bleſſed Saviour.

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And becauſe it may ſeem impoſſible to Poſterity, that any Party of Men could have the Face, or the Folly, to affirm ſuch palpable Contradictions, I ſhall extract ſome Paſſages from *Rapin* (whoſe Authority they will never diſpute, his pretended Hiſtory being little elſe but a Collection of all the Lies and Forgeries the Faction have, from Time to Time, advanced to ſerve their Ends) that will ſufficiently manifeſt this Conduct.

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Page 81, *Rapin* affirms, "That in the "Year 1677, the King had no Deſire to be- "gin a War with *France: His private En- "gagements with* Lewis XIV. *being too ſtrong "to allow him any ſuch Thought.*

Page 82, "The more powerful the King "of *France* rendered himſelf, the greater was "King *Charles*'s private Advantage; as it "was from the Aſſiſtance of *France*, he pro- "miſed himſelf the Conqueſt of his own "Kingdom.

Page 88, *Rapin* ſays, "I do not think it "poſſible (*Anno* 1677) to account for the "King's Conduct, in a Manner ſatisfactory "to the Impartial, without ſuppoſing *he ex- "pected Aſſiſtance from* France *to make him "abſolute, and change the Eſtabliſhed Reli- "gion.*

And Page 116, he tells us, That *the King's "Conduct* (Anno 1678) *could only be aſcribed "to his Paſſion, for executing his darling "Scheme of rendering himſelf abſolute, and in- "troducing the Popiſh Religion in* England.

Theſe are ſome of the numerous Inſtances, that *Rapin* and his Party have given us, of King *Charles*'s repeated Deſigns, and Attempts to extirpate the Proteſtant Religion, and Introduce Popery; and yet in this very Year 1678, do they trump up a Plot, in which they pretend, that not only the *Engliſh* Papiſts, but all the Popiſh Powers in *Europe*; even his Ally the *French* King, as has been obſerved already, were engaged, *to deſtroy him, becauſe he was an Heretick, and would not eſtabliſh Popery in* England. And to that Degree were the People diſtracted, and infatuated by the Artifices of *Shaftesbury* and the Faction, that great Numbers of People were executed for this pretended Plot; and though the King ſoon found it was a Sham, the Party had ſuch an Aſcendant, that they compelled him to ſuffer thoſe Executions; and among the reſt, that of the unfortunate Lord *Stafford:* And when the Forgery became Evident both to King and People, and the Credit of the Plot could be ſupported no longer, the Faction then had recourſe to their old Stratagem again, and very near ſpirited up the People into Rebellion a ſecond Time, *under Pretence the King himſelf was in the Plot to introduce Popery.*

Indeed *Rapin*, p. 119, endeavours to explain this Riddle, by making two Plots: He ſays, the King was engaged in a Plot to introduce Popery and Arbitrary Power; and the Jeſuits, and ſome few Deſperadoes of their Religion, were in another Plot, to take away his Life, as the readieſt way to introduce their Religion: But ſurely, if this was the Caſe, the Jeſuits never acted more unjuſtly, more ungratefully, or impolitically; for *Rapin* takes it for granted, that the King was actually a Papiſt, and heard Maſs every Day in his own Palace: That he encouraged and preferred none but thoſe who were Popiſhly affected at Home; and entered into Foreign Alliances, eſpecially with the *French* King, on Purpoſe to bring in Popery by Force, if it would not be affected otherwiſe; and continued, with all imaginable Application and Artifice, to labour the eſtabliſhing that Religion here for many Years: Can it then be ſuppoſed, that ever the Jeſuits, or any Papiſts, ſhould conſpire to cut off ſuch a Prince; eſpecially when they knew he did not want Skill and Addreſs, to effect what they ſay he ſo paſſionately deſired, and would loſe no favourable Opportunity for promoting their Superſtition? Would they kill him, becauſe he did not precipitate Matters, and defeat their Hopes, by raſh and unſeaſonable Attempts? This can never be ſuppoſed of that cunning Society of the Jeſuits, if they could be preſumed to have ſo little Juſtice, or Gratitude, as to murder a Prince, who was their Convert, and had left no Stone unturned to ſerve them.

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But further, *Rapin* pretends, that the Deſign of killing the King, was carried on only by ſome few Deſperadoes, and that none elſe were acquainted with it; but, if we are to credit the Witneſſes the Faction produced to prove the Plot, the King's Death was reſolved on by *All* that were tried for the Plot; by *All* the Popiſh Lords; by the *Engliſh* Catholicks *in general*; and by the Courts of *Rome*, *Spain*, and *France*; and was become the Common Talk in every Roman Catholick Court in *Europe*, for ſeveral Years; and conſequently, if there was a Deſign to kill the King, it was not confined to a few Deſperadoes: The Papiſts in general were engaged in it, and it could not be concealed from the King himſelf. But it is evident the King never ſuſpected that any one of thoſe that were executed for conſpiring againſt his Life, were Guilty, by his Endeavours to ſave them, which is to me a ſtrong Preſumption of their Innocence; for no Perſon was ſo much concerned to ſee Juſtice executed upon them as his Majeſty, if they were Guilty. We may therefore very reaſonably conclude, that all that were executed for that Plot, were very unjuſtly put to death; and from the Trials that followed the Year after, it is no leſs evident, that the Faction only amuſed the Nation with this Plot, to conceal another of their own againſt the King's Life, and the Conſtitution in Church and State; treading in the Steps of their Fore-fathers, who depoſed and murdered his Father, ſubverted the Government, and eſtabliſhed Presbytery, and a Republican Form of Government by the very ſame Arts; namely, by alarming the Nation, with terrible Apprehenſions of Popery, Arbitrary Power, and a general Maſſacre: It is plain, the Biſhops and the Church of *England* were ſufficiently convinced of this Deſign, by their adhering to the Court ſo ſtrenuouſly, after the Roguery of the Popiſh Plot was detected, and by their aſſiſting the King in ſubduing that rebellious Spirit, which manifeſted itſelf ſoon after, in fanatick Plots and Conſpiracies to aſſaſſinate his Majeſty: And if the Biſhops and Clergy of the Church of *England* were of Opinion, that the Fanaticks and Republicans had a View to the ſubverting the Government and Religion eſtabliſhed, (as *Rapin* admits) I ſhall make no Difficulty to believe they underſtood what Deſigns were on Foot, and what was the Intereſt of the Nation, as well as *Rapin*, or any of their Enemies. But it is remarkable, that this celebrated Writer himſelf, vol. 14, p. 299, acknowledges, that the Presbyterians

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Presbyterians and Republicans of thoſe Times, had the Subverſion of the Conſtitution in View which is ſo conſiderable and deciſive a Conceſſion in this Diſpute, that I ſhall recite his very Words.

" It was inſinuated (ſays *Rapin)* to the " Epiſcopalians, of whom the Majority were " Tories, that both Church and Monarchy " were in Danger; and that the Scene was " again opening, which had brought on the " Troubles of *Forty-one*. That the Presby- " terians, under Colour of providing for the " Preſervation of Liberty, had only in View " the Deſtruction of the Church of *Eng-* " *land*, and the Introduction of Presbyteri- " aniſm; in order to which they were pur- " ſuing the ſame Meaſures, that they had " taken in 1640, and the following Years, " by undermining the Foundations of Mo- " narchy, the more eaſily to pull down the " Church. Theſe Inſinuations had the great- " er Effect, as what had once happened, and " whereof the Memory was ſtill freſh, might " happen again; *and I do not know whether it* " *can be juſtly doubted, that ſome of the Presby-* " *terians had ſuch a Thing in View:* And in " the ſame Page, he ſays, The three laſt " Parliaments, compoſed of Men well-affect- " ed to Presbyterianiſm, proceeded not with " Caution enough; but *diſcovered too haſtily,* " *or too openly, their Deſigns, with regard to* " *Religion.*

Will any Man, after ſuch Conceſſions made by *Rapin*, the great Advocate of the Presbyterians, doubt whether the King's Life, and the eſtabliſhed Religion, were not in more Danger at that Time, from the Presbyterians and Republicans, than from the Papiſt? Will he not conclude, that this pretended Popiſh Plot was intended to conceal a real Presbyterian Plot?

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So jealous were the Faction that this Artifice ſhould be diſcovered, that we find they made it one of the Articles of Impeachment againſt the Lord *Stafford*; that he deſigned to throw the Plot upon the Proteſtants, by whom they always mean the Presbyterians, and proſecuted all thoſe with the utmoſt Fury, that durſt ſuſpect their Knavery: And how did they compel the King to act contrary to his own Reaſon and Senſe of Things, when they obliged him to offer extravagant Rewards to Diſcoverers, to careſs thoſe perjured Wretches and Witneſſes, and lodge them in his own Palace? And laſtly, what a Force did they put upon him, when they executed this Lord, and the reſt of the Sufferers, for this pretended Plot? Every one knows the King would have ſaved them, if he durſt: Which, as has been obſerved, is a ſtrong Inducement to believe they were not Guilty. For is it to be ſuppoſed, when King *Charles* had ſeen ſo many tried for this Plot, that he had not Penetration enough to diſcern, whether they were really Guilty? and, if he had thought them Guilty, can it be believed he would have endeavoured to ſave Men that had reſolved to Aſſaſſinate him; or have diſcharged thoſe Lords out of the *Tower*, who were impeached and charged with being in the ſame Conſpiracy?

1680. 32 Car. II. Thompſon's Caſe.

Proceedings againſt RICHARD THOMPSON, *of* Briſtol, *Clerk, before the Houſe of Commons, in the Month of* December, 1680. *Upon Complaint made of ſome* Words *he had* uttered in a Sermon, *preached on the* 30*th of* January, 1679, *at* Briſtol, *and at other Times and Places.*

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SOME of the Witneſſes declared, they heard him ſay in the ſaid Sermon, That the Presbyterians were ſuch Perſons, as the very Devil bluſhed at them: That the Villain *Hampden*, made it more ſcruple of Conſcience, to give Twenty Shillings to the King for Ship-Money, which was his Right by Law, than to raiſe a Rebellion againſt him; and that the Presbyterians were far worſe (and far more intollerable) than either Prieſts or Jeſuits.

That he inveighed bitterly againſt the ſigning Petitions for the Sitting of a Parliament; ſaid it was the Seed of Rebellion, and likened it to *Forty-one*.

That he ſaid *Henry* VIII, did more Hurt in robbing the Abby-Lands, than he did Good by the Reformation.

That he ſaid, there was a great Noiſe of a Popiſh Plot, but there was nothing in it, but a Presbyterian Plot; and in the End they would bring the King's Head to the Block, as they had done his Father's.

Others depoſed, That *Thompſon* had uttered ſeveral Speeches, whereby he ſhewed he was Popiſhly affected: That he commended the Romiſh Clergy for their ſingle Life, and was himſelf unmarried.

Said, That the King was of a ſoft Temper, might be led to any Thing; but a *Solomon* in his Vices: The Duke of *York* was a Prince of a brave Spirit, and it was their own Faults he was a Roman Catholick; they forced him to fly into *France*, where he embraced that Religion.

Being examined before a Committee of the Houſe, as to his having ſpoken theſe, and Words of the like Import, ſome he confeſſed, and others he denied, or ſoftned, and the Committee making their Report thereupon to the Houſe, it was reſolved, *Nemine contradicente*, That he had publickly defamed his Majeſty, vilified the Reformation, aſſerted Popiſh Principles, denied the Popiſh Plot, and turning the ſame upon the Proteſtants, endeavoured to ſubvert Liberty and Property, and was a Scandal to his Function.

And it was further Reſolved, to impeach the ſaid *Richard Thompſon*, on the Report of the ſaid Committee: However, upon his Petition, they ordered the Serjeant at Arms to take Security for his Appearance, to anſwer the ſaid

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Impeachment; and the Houſe being prorogued the Matter was dropped.

It is eaſy to diſcern what Stamp this Houſe of Commons were of, to prefer an Impeachment againſt a Perſon, chiefly for reflecting on the Presbyterian, and the Popiſh Plot: This extraordinary Reſolution ſeems to be made to terrify the People from ſpeaking, or thinking, otherwiſe than the Faction were pleaſed to preſcribe. They charged him indeed with reflecting on the King, but that was only to give them a Colour for the Proſecution; for it is evident the Faction did, at the ſame Time, publiſh all manner of ſeditious and ſcandalous Libels, reflecting on his Majeſty and the Royal Family, without any Animadverſion or Notice taken of them by the Houſe.

It ſeems to me alſo, a very great Hardſhip, and not agreeable to the good old Laws of this Land, (which requires that, in ordinary Caſes, every Man ſhould be tried by his Peers, or Equals) That a Perſon ſhould be impeached and tried before the Lords, when he is forth-coming, and ſubmits to be tried by the ordinary Courts of Juſtice; and this only for ſome looſe and unguarded Expreſſions, that were not agreeable to the Taſte of a prevailing Party. If the Words were criminal, they had Witneſſes that could have proved them in *Weſtminſter-Hall*, as well as at the Lords Bar; and if they were not, it was hard they ſhould be made the Foundation of an Impeachment.

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The Trial of EDWARD FITZHARRIS, Eſq; for *High-Treaſon*, before the Court of *King*'s-*Bench*, in *Eaſter* and *Trinity*-Terms. 1681. 33 *Car.* II.

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Fitzharris's *Trial.*

EDWARD FITZHARRIS, being committed for a Treaſonable Libel, reflecting on the King and Government, on the 28th of *February*, 1680; and the Parliament meeting at *Oxford*, on the 21ſt of *March* following, the Commons impeached *Fitzharris* of High-Treaſon, in general Terms:

He is impeached generally.

But the Lords finding no Reaſon for this extraordinary Way of proceeding, when he might be tried in the ordinary Courts of Law,

The Impeachment rejected.

rejected the Impeachment: Whereupon the Commons Reſolved, That it was the undoubted Right of the Commons to impeach any Peer, or Commoner, before the Lords; and that the Lords refuſing to proceed on this Impeachment of *Fitzharris*, was a Denial of Juſtice, and a Violation of the Conſtitution of Parliaments; an Obſtruction to the further Diſcovery of the Plot, and of great Danger to his Majeſty's Perſon, and the Proteſtant Religion: And that if any inferior Court ſhould proceed againſt *Edward Fitzharris*, or any other Perſon, lying under an Impeachment of Parliament, it would be a high Breach of Priviledge: But the King diſſolving the Parliament the ſame Day, being the 28th of *March*, 1681, the Miniſtry directed *Fitzharris* to be tried at the *King's-Bench* Bar.

Reſolutions of the Commons thereupon.

On *Wedneſday*, the 27th of *April*, Mr. Attorney-General moved the Court of *King's-Bench*, that ſome of the Grand Jury for the County of *Middleſex* might be preſent at the ſwearing the Witneſſes on the Indictment to be preferred againſt *Fitzharris*, then a Priſoner in the *Tower*, which was granted: And the Grand Jury having ſome Scruples about finding the Bill, Mr. Juſtice *Jones* ordered them to attend, and offer them the next Day, when the Court would be full.

Accordingly the 28th of *April*, the Grand Jury came to the Bar, and Mr. *Michael Godfrey* (Brother to Sir *Edmondbury Godfrey*) who was Foreman, deſired, before they proceeded on the Indictment, that *Fitzharris* might be examined about his Brother's Death, and then delivered in a Paper, in behalf of himſelf and the reſt of the Grand Jury, importing, That the Day before they had heard Sir *William Waller*, and others ſworn in Court, to give Evidence againſt *Fitzharris*, who, in the late Parliament at *Oxford*, was impeached by the Commons: And deſired the Opinion of the Court, whether it were lawful and ſafe for them to proceed to examine Witneſſes in relation to *Fitzharris*, or to meddle in that Matter, after the ſaid impeachment, and Votes of the Commons.

The Grand Jury doubt, whether they may find an Indictment againſt him.

To which the Lord Chief Juſtice anſwered, it was their Opinions, That notwithſtanding what they ſuggeſted, they were bound to enquire, by Virtue of their Oaths, if an Indictment ſhould be exhibited to them: They could not, nor ought to take any Notice of ſuch an Impeachment offered to the Lords, or of any ſuch Votes of the Houſe of Commons afterwards, if ſuch there were; for they would not excuſe them: Therefore if they had Evidence enough given them, to ſatisfy them that the Indictment was true, they were to find it. And this, he declared, was the Opinion of all the Judges of *England:* Whereupon the Grand Jury withdrew, and having examined the Witneſſes, found the Bill.

They find the Bill.

Fitzharris *arraigned.*

Fitzharris being brought to the Bar, from the *Tower*, by *Habeas Corpus*, on *Saturday* the 30th of *April*, and arraigned, exhibited a written Plea, which the Court ordered to be read, though they did not allow it; the Tenor whereof follows, *Viz.* That he ought not to be compelled to anſwer to this Indictment, becauſe, before the Indictment was found, at a Parliament held at *Oxford*, the 21ſt of *March* laſt, he was impeached by the Commons of High-Treaſon; and that this Impeachment remained in full Force before the Lords in Parliament, as appeared by the Records: And then avers, that the High-Treaſon mentioned in the Indictment, and the High-Treaſon in the Impeachment, are one and the ſame; and that he is the ſame *Fitzharris*, named

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named in the Indictment, and mentioned in the Impeachment; and concludes to the Juriſdiction of the Court, whether upon the whole they will proceed further againſt him on this Indictment.

Counſel aſſigned to argue it.

The Chief Juſtice acquainting the Priſoner, that ſuch a Plea muſt have a Counſel's Hand to it, he deſired they would aſſign Sir *Francis Winnington*, Mr. *Williams*, Mr. *Pollexfen*, and Mr. *Wallop*, for his Counſel, who were aſſigned accordingly, and Time was allowed him tell the *Wedneſday* following, to put in his Plea; and a rule was made, that his Wife, and his Counſel, ſhould have Acceſs to him.

On *Monday* the 2d of *May*, the Priſoner's Counſel moved, that the Time for putting in his Plea might be enlarged, and that they might have a Copy of the Indictment: But the Court refuſed to give further Time, and ſaid, a Copy of the Indictment, in Caſes of Treaſon and Felony, was never granted: But at the Priſoner's Requeſt, they added Sir *George Treby*, and Mr. *Smith*, to the Number of his Counſel, and allowed him a Solicitor.

Fitzharris being brought to the Bar again, on *Wedneſday* the 4th of *May*, produced the aboveſaid Plea, ſigned by Counſel, which the King's Counſel inſiſted was a frivolous Plea, only for Delay, and ought to be rejected immediately; but the Court declaring they would take time to conſider of it, Mr. Attorney demurred to the Plea, and the Priſoner's Counſel joined in the Demurrer; after which, Mr. Attorney deſired the Judgment of the Court, That the Plea might ſtand over-ruled, for a plain fatal Error in it; for this he inſiſted was a particular Indictment, for framing a moſt pernicious and ſcandalous Libel againſt the King and Government; and they had pleaded generally, That the Priſoner was impeached of High-Treaſon: They ought to be ready with the Record, to juſtify their Plea: That to out the Court of their Juriſdiction, for a particular Treaſon, it was not a good Plea to ſay he was impeached or indicted generally of High-Treaſon: Nor could any Averment help it; and therefore he prayed the Judgment of the Court upon it.

The Plea demurred to.

The Priſoner's Counſel, on the other Hand, deſired Time to maintain their Plea, and were indulged till the *Saturday* following; but were again refuſed a Copy of the Indictment.

The Priſoner being brought to the Bar again, on *Saturday* the 7th of *May*, Mr. Attorney ſaid, he would lay his Finger upon the Points that would be the Queſtions between them, and 1. He inſiſted, That the general Allegation, that he was impeached of High-Treaſon, was too uncertain and general, and not helped by the Averment. 2. There was no Impeachment alledged to be upon Record; and as to the Matter, it was a Plea to the Juriſdiction of the Court; and the Point would be, Whether a Suit, depending in a ſuperior Court, can take away the Juriſdiction of an inferior Court, which had an original Juriſdiction of the Cauſe, of the Perſon, and of the Fact.

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To this the Priſoner's Counſel anſwered, That by the Demurrer, theſe Things were admitted; 1. That the Priſoner was impeached by the Commons of High-Treaſon. 2 That this Impeachment was ſtill in being. 3. That this was according to the Law, and Cuſtom of Parliament; and 4. That the Treaſon, for which *Fitzharris* was impeached, and the Treaſon, for which he was indicted, was the ſame: That *Fitzharris*, who was indicted, was the ſame Perſon that was impeached, and that the Impeachment was before the Indictment.

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And as to what Mr. Attorney ſaid, That an inferior Court, having original Juriſdiction of the Perſon and Cauſe, might proceed, notwithſtanding an Indictment in a ſuperior Court; they took the Caſe of an Impeachment to be different from that of an Indictment: An Impeachment was rather like an Appeal: As an Appeal was at the Suit of the Party, ſo an Impeachment was at the Suit of the Commons: The Commons were Proſecutors on an Impeachment, and not the King's Attorney; and it did not become the Juſtice of that Court, to weaken the Methods of proceeding in Parliament, as they would certainly do, if, after there was an Impeachment depending in Parliament, they admitted an Indictment here: This was to ſubject the Proceedings in Parliament to this Court, which did not ſtand with the Wiſdom of the Law, or the Conſtitution of the Government: That this was without Precedent alſo, and conſequently, according to Sir *Edward Coke*, there was no Law for it.

Another Miſchief, that would follow upon this was, that in Caſe of an Indictment, it was in the Power of the Prince to pardon; but in the Caſe of an Impeachment he could not, any more than in the Caſe of an Appeal.

That if this Court intermeddled in it, a Man might be put twice in Danger of his Life, for one thing; for, if he was acquitted here upon this Indictment, that Acquittal would not bind the Lords in Parliament; he might ſtill be tried there for the ſame Fact.

And by the ſame Reaſon, that this Court proceeds, His Majeſty might appoint a High Steward, to try the Lords in the *Tower*, by a Jury of Peers; and had this been practiſed, the Lord *Stafford* had been ſtill alive: If *Fitzharris* ſhould be found guilty here, the Power of the Commons, in impeaching, and the Juriſdiction of the Lords, in Trial and Judgment, were taken away by an inferior Court.

As to the Objection of Mr. Attorney, That this Plea did not ſet forth any Record of an Impeachment, or the particular Matter of it, ſo as the Court might judge of the Reaſon of it, the truth was in this Caſe, there was no Record to plead, and they muſt be governed here by the Rules and Methods of Parliament. The Commons had carried up an Impeachment to the Lords in general Terms, and were at Liberty to preſent their Articles in due Time. This was no Record, ſuch as might be had in the Caſe of *auter forix convict*; for it was only entered in the Lords Journal, That ſuch a Day, ſuch a Perſon came from the Houſe of Commons, and impeached ſuch a one; here was not the ſame ſtrict Method, and Form of Proceeding, as in the Courts of

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of *Weſtminſter-Hall*; and they had ſaid enough, and as much as could be ſaid in this Caſe, *That there was an Impeachment of the Commons before the Lords, which was in full Force, and according to the Law and Cuſtom of Parliaments, as appeared by their Rolls.* Which was as much, as if they had ſet forth the Record itſelf; and, as they took it, was a very full Plea, though it was not pleaded particularly; for in Parliamentary Matters, that Court was to judge according to the Methods of Parliament.

In the Caſe of the Lord *Shaftesbury*, who was committed for an high Contempt in the Houſe of Lords, the Reaſon given by the Judges, why they could not bail him, was, That as this Court takes Notice of the Courts in *Weſtminſter-Hall*, ſo they ought to take Notice of the Law and Courſe of Parliaments, and of the Houſe of Lords: And if they were bound to do ſo in other Caſes, they ought to do ſo in this.

As to that Exception, that the King might chuſe his Court, there was no Doubt of it, in his own Action, or Suit; but this was an Impeachment of the Commons, and their Suit was to be tried no where but in Parliament.

It was urged further, as to the Plea being ſo general, that the Court could not judge of it; That *Fitzharris* had averred by his Plea, that he was impeached for the ſame Treaſon, for which he was indicted; and this Averment made the Matter as clear to the Court, as if the Impeachment had mentioned the particular Treaſon; and that Averments, conſiſtent with the Record, were good, and of Neceſſity, to clear the Fact to the Court: That Mr. Attorney might have pleaded *Nul. tiel Record.* and then they muſt have produced it; but he had demurred, and thereby confeſſed there was ſuch a Record, that the Averment was true, that he was impeached for the ſame Crime, and that he was the ſame Perſon.

That it ſeemed againſt natural Juſtice, That when the Commons in the Name of themſelves, and of all the Commons of *England*, had lodged an Impeachment againſt a Man, any Commoners ſhould afterwards try or judge that Man for that Fact; every Commoner being a Party to the Accuſation, and conſequently could not be deemed indifferent. That Indictments were found againſt the Popiſh Lords, before there were any Impeachments againſt them; and yet there never was any Attempt to try them on the Indictments, though there had been ſeveral Intervals of Parliament ſince thoſe Impeachments, and the Parliament, wherein they were impeached, was diſſolved. They underſtood it was the Opinion of all the Judges, That, thoſe Impeachments being lodged in Parliament, no other Proſecution could be againſt them, till the Proſecution of the Commons was determined.

It was obſerved alſo, how ſcrupulous the Judges had ever been of meddling, where they had any Jealouſy, that either the Parliament had, or *pretended to have*, a Juriſdiction, *That they would always worſhip afar off, and never come near the Mount.* That if the Court retained that Cauſe, they would in Conſequence charge themſelves with the Blood of that Man, through which they muſt wade to come at the Cauſe.

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That where there were as much Certainty ſet forth as the Caſe would admit, and was poſſible to be had, the Party was at Liberty to plead as he could, and help himſelf by Averment. Here was a General Impeachment; they could not make that Particular which was not; they had pleaded it as it was in the Record, from which they could not vary: They had avered it was the ſame Matter, and it was confeſſed ſo by the Demurrer: And if the Court would meddle with Proceedings in Parliament, they muſt take Notice of their Method of Proceeding, as they did of other Courts: That had they gone about to particularize the Treaſon, when the Impeachment was general, the other Side would have ſaid, *Nul tiel Record*: And they ſhould have been condemned for failing in their Record; but having done according to the Fact, if that Fact was ſuch as would out this Court of its Juriſdiction, they did not ſee how it was poſſible they ſhould plead otherwiſe, or what Anſwer could be given to it.

Arguments againſt the Plea.

Mr. Attorney-General, and the reſt of the King's Counſel, anſwered, That this was a naughty Plea, as a Plea to the Juriſdiction of the Court; for there was no Matter diſcloſed therein that they could take Iſſue upon: They urged, indeed, that by their Demurrer it was admitted an Impeachment was depending; that the Impeachment was for the ſame Matter; and that they had admitted the Parliament was ſtill in Being; *but no Fact was admitted that was not well pleaded.* Indeed, had they admitted the Parliament was then in Being, it might have gone hard with them; but if this was not admitted, the whole Force of their Argument fell to the Ground; and affirmed, that the Beginning, Continuance, Prorogation, Adjournments, and Diſſolution of Parliaments, were of publick Cognizance, and the Court would, *ex Officio*, take Notice of them; they need not be averred. And, notwithſtanding thoſe many Cautions that had been given, no Conſideration whatever ought to put Courts of Juſtice out of their ſteady Courſe; but they ought to proceed according to the Law of the Land.

Admitting there was a good Impeachment, and the Priſoner had been tried and acquitted upon it; if he had been afterward indicted in this Court, and would not have pleaded this in Bar, but to the Juriſdiction of the Court, it would not have been a good Plea; but he had loſt his Advantage by miſ-pleading. If then an Acquittal, or Conviction on an Impeachment, was not a good Plea to the Juriſdiction; an Impeachment alone, wherein nothing was done, could not be a good Plea to the Juriſdiction. All the Caſes that had been cited, were of Matters not cognizable in that Court, and therefore did not affect the Matter in Queſtion. But where the Crime and the Perſon were abſolutely within the Juriſdiction of the Court and the Court might originally take Cognizance of it, as was the preſent Caſe; nothing leſs than an

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Act of Parliament could out them of their Juriſdiction.

As to the Caſe of the five Popiſh Lords, they took Care that the Indictments againſt them ſhould be removed into the Houſe of Lords, foreſeeing that the King might have proceeded on thoſe Indictments, if they had not been removed thither. Beſides, the Lords had pleaded in full Parliament, where, by the Law of Parliament all the Peers were to be Judges, and could not be outed of that Right.

And as it was urged, They had pleaded according to the Law and Cuſtom of Parliament, they ought to have diſcloſed what that Law and Cuſtom was. Indeed, as to their Legiſlative Power, and Matters of Privilege, both Houſes proceeded according to the Law and Cuſtom of Parliament: But as to the Judicial Power, they had always been guided by the Laws of the Land: And in all Writs of Error, and Matters of Judgment, proceed *ſecundum legem terræ*; for there was not one Law in *Weſtminſter-hall*, as to Matters of Judgment, and another in the Court of the Lords above.

As to the Allegation being too general, the Books were expreſs, That when a Record was pleaded in Bar, or in Abatement, the Crimes ought to be ſet out ſo as to appear the ſame: The Record was not to be tried *per pais*, but by itſelf: The Court muſt judge of it: The particular Treaſon muſt appear in the Record, and no Averment could enlarge it: Should a Jury judge upon the Debates of the Houſe of Commons, Whether it was the ſame Treaſon or not?

They ſhould not inſiſt at this Time, That by *Magna Charta*, every Man ought to be tried by his Peers, or on the Stat. 4 *Ed.* 3. which ſaid, that the Lords ſhall not be compelled, or have Power, to give Judgment on a Commoner, and that thereby the Subject was ſecured from Impeachment; but obſerved that there was a wide Difference between an Appeal and an Impeachment; for an Impeachment concludes, *contra ligeantiæ ſuæ debitum, & Coronam & Dignitatem Domini Regis*: So it was in reality the King's Suit, and the King may pardon Part of the Sentence, as was done in *Richard* IId's Time, and lately in Lord *Stafford*'s Caſe: But were it admitted to be done at the Suit of the People, that could not preclude the King from his Suit: Nor is an Acquittal, or Attainder upon an Indictment, a Bar to an Appeal; ſo that a Man is twice in Danger of his Life, in that Caſe as well as this. But this is not like the Caſe of an Appeal; for though formerly it was uſual to ſtay the Suit of the King, and prefer the Suit of the Subject, it was becauſe the Subject had the neareſt Concern, as the Son in the Death of his Father, and it moſt concerned him to proſecute it. But in the Caſe of an Impeachment, the Treaſon turned quite another Way; for there was no Treaſon, but againſt the King, and the King himſelf has the neareſt Concern; the Wrong was primarily and originally to himſelf; the Subjects Danger was but a Conſequence of that, as all Hurt to the King tends to the Hurt of the People. The King's Suit therefore ought to be preferred here, as the Subjects was in the other Caſe of an Appeal.

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Nor was this ſo dangerous a Caſe to determine, as was pretended. Much better would it be for the Court to anſwer, if ever they ſhould be required, that they had performed their Duty, and done Juſtice according to their Conſciences, and their Oaths, than to be afraid of any Threats, or Bug-bears from the Bar: How was it poſſible to judge, whether the Priſoner was impeached for the ſame Treaſon? It might be for Clipping or Coining, for ought appeared. The Intention of the Houſe of Commons could not be proved, when they were come to no Reſolution. The Queſtion was not, whether an Impeachment in the Houſe of Lords ſuperſeded an Indictment in the *King*'s-*Bench*, but whether they had pleaded it ſo ſubſtantially, as to enable the Court to judge upon the Queſtion: But further, if upon ſuch a Plea pleaded, the Commons ſhould carry up Articles very different from what the Plea ſuggeſted, then the Plea would appear to be falſe, and the pleading, and allowing it, an apparent Delay of Juſtice: The Intention of the Houſe of Commons could never be averred, or tried, before they had declared it themſelves.

The Lord Chief Juſtice ſaid, As to thoſe Queſtions, whether the Commons could Impeach a Commoner for Treaſon in the Houſe of Lords, and whether an Impeachment, when the Lords were poſſeſſed fully of it, hindered the Proceeding of an inferior Court, did not concern them: But they had a Caſe that aroſe purely upon the Pleadings, and whether they had brought before them a ſufficient Plea, to take away the Juriſdiction of the Court, as they had pleaded it, was the ſole Point before them. They would give them Time to amend their Plea, he ſaid they ſhould not be ſurprized, but if they thought fit to abide by that Plea, they ſhould take a reaſonable Time to give them Judgment.

Fitzharris being brought to the Bar again, the 11th of *May*, and Mr. Attorney praying Judgment upon the Plea, the Chief Juſtice ſaid, That upon full Conſideration, and Deliberation of this Caſe, and upon Conference with other Judges, Mr. Juſtice *Jones*, Mr. Juſtice *Raymond*, and himſelf, were of Opinion, that the Plea was inſufficient (Mr. Juſtice *Dolben* doubting concerning it) and therefore the Court did order and award, that he ſhould anſwer over to the Treaſon. *The Plea over ruled.*

Then the Priſoner deſired he might adviſe with his Counſel, before he pleaded; and being told he could have no Counſel as to Matter of Fact, he deſired he might finiſh his Confeſſion before the Lord Chief Juſtice, and ſome of the Counſel, before he pleaded: To which the Chief Juſtice anſwered, He had trifled with them ſo often, that he had nothing to ſay to that Matter at preſent, and again directed him to plead: Whereupon *Fitzharris* pleaded *Not Guilty*; and deſiring he might have Time to ſend for a Witneſs from *Holland*, before his Trial, the Court were pleaſed to put off the Trial till next Term; and a Rule was made, that in the mean Time his *He pleads Not guilty.*

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his Wife, and his Solicitor, might come to him with his Papers (provided the Papers were firſt inſpected by the Lieutenant of the *Tower*) and *Subpœna's* were ordered to bring in his Witneſſes.

The Trial begins.

The Priſoner was brought to the Bar again, the 9th of *June* 1681, being the firſt *Thurſday* in *Trinity*-Term, in order to his Trial, when Mr. *Thompſon* moved, that before his Trial he might give Evidence againſt Sir *John Arundel*, and Sir *Richard Bealing*, concerning the Murder of Juſtice *Godfrey*, for that there was an Attempt to prove the Murder himſelf. The Chief Juſtice anſwered, that what had been moved ſome Days before, had ſome Reaſon in it, namely, that he might give Evidence to a Grand Jury; but there being no Grand Jury ſworn, there was nobody to give Evidence to, unleſs they would have the Court take his Examination, and afterwards give it in Evidence to the Grand Jury.

Then the Priſoner moved, That his Wife and his Sollicitor might ſtand by him, with ſuch Papers as he had prepared to help his Memory: And it was granted, his Wife only ſhould; but ordered, If ſhe brought Papers drawn by Counſel for him it ſhould not be allowed.

The King's Counſel informed the Court, that the Priſoner's Wife had brought him a Copy of the Pannel, with Directions whom he ſhould challenge; and that there were three Anabaptiſt-Preachers, and ſeveral other Fanaticks returned upon the Jury; and inſiſted, that the Priſoner's Wife ſhould be removed farther from him: But the Priſoner returning the Papers, ſhe was permitted to remain where ſhe was.

A great many of the Jurors deſired to be excuſed ſerving, and ſeveral more were challenged, ſome by the Priſoner, and others for the King. Sir *Michael Heneage* ſaid, He was ill; Major *Wildman* ſaid, He had voted the Impeachment, and therefore thought he ought not to ſerve: Mr. *Beard* ſaid, he was ſeventy-five Years of Age; but was told, Since he had appeared, he muſt ſerve, if there were not enough; but if he had not appeared, he might have had a Writ of Privilege for his Diſcharge, in regard of his Age.

Two of the Jurors being challenged peremptorily for the King, the Priſoner inſiſted, That the King's Counſel ought to ſhew Cauſe: To which the Chief Juſtice anſwered, The King need not ſhew Cauſe 'till the Pannel was gone through; and at length the following Gentlemen were ſworn: *viz.*

Thomas Johnſon,	*William Withers*,
Lucy Knightley,	*William Cleeve*,
Edward Wilford,	*Thomas Goffe*,
Alexander Hoſey,	*Ralph Farr*,
Martin James,	*Samuel Freebody*, and
John Vyner,	*John Lockyer*.

The Indictment.

Pen, Ink, and Paper, being allowed the Priſoner on his Requeſt, the Indictment was read; which charged the Priſoner with High-Treaſon, in compaſſing and imagining the Death of the King; and inciting one *Edmond Everard*, and others, to aſſiſt him therein: And that, the better to effect his traiterous Purpoſes, he did frame and make a treaſonable Libel; entitled, *The true* Engliſhman *ſpeaking plain* Engliſh. In which were the following Words: "If *James* (meaning the Duke of *York*) be "conſcious and guilty, *Charles* (meaning the "King) is ſo too: Believe me, both theſe "are Brethren in Iniquity: They are in Con-"federacy with the Pope and the *French*, to "introduce Popery and arbitrary Govern-"ment, as their Actions demonſtrate. The "Parliament's *Magna Charta*, and the Li-"berty of the Subjects, are heavy Yokes, "they would willingly caſt off, to make "themſelves as abſolute as their Brother of "*France*: And if it can be proved to be their "Aim and main Endeavour, why ſhould not "every true *Briton* be a Quaker thus far, and "let the *Engliſh* Spirit be up and move, as "one Man, to Self-Defence? Nay, and if "need be, to open Action, and fling off theſe "intolerable Riders?" And, in another Place, "*J.* and *C.* (meaning the King and "Duke) both Brethren in Iniquity, corrupt "both in Root and Branch, as you have ſeen, "ſtudy to enſlave you to a *Romiſh* and *French*-"like Yoke. Is it not plain? Have you not "Eyes, Senſe, or Feeling? Where is that "old *Engliſh* noble Spirit? Are you become "*French* Aſſes, to ſuffer any Load to be laid "upon you? And if you can get no Remedy "from the next Parliament, as certainly you "will not; and that the King repents not, "complies not with your Advice; then up, "all as one Man. O brave *Engliſhmen*, look "to your own Defence, ere it be too late! "Rouſe up your Spirits!" In another Place, he ſays, "I will only add, that, as it is the "undoubted Right of Parliaments to make "a Law againſt a Popiſh Succeſſor, who "would prove deſtructive to our Laws and "Liberties; ſo it is their undoubted Right "to dethrone any Poſſeſſor, that follows evil "Counſellors, to the Deſtruction of our Go-"vernment." In another Place, "Then "let all be ready: Then let the City of "*London* ſtand by the Parliament, with Of-"fers of any Money for maintaining their "Liberties and Religion, in any extreme "Way, if Parliamentary Courſes be not "complied with by the King."

Everard's Evidence.

The Witneſſes being called, Mr. *Everard* depoſed, That he came acquainted with the Priſoner *Fitzharris* in the *French* Service abroad; and renewing his Acquaintance with the Priſoner in *February* laſt, he told the Deponent, if he would re-ingratiate himſelf with the *French* and Popiſh Intereſt, he might be ſerviceable to himſelf and others: That there were ſeveral Parliament Men, and others, that did adhere to the *French* Intereſt, and gave the *French* Ambaſſador an Account of every Day's Proceedings. That the Priſoner deſired the Deponent to write another Pamphlet, reflecting on the King; to alienate the King from his People, and his People from him: (The Deponent being ſuppoſed the Author of a Pamphlet, called, *An Anſwer to the King's Declaration, concerning the Duke of* Monmouth.) That on *Monday* the 21ſt of *February*, the Priſoner came to the Deponent, and gave

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gave him ſome Inſtructions for drawing up the Pamphlet; and appointing to come again, the Deponent concealed Mr. *Smith* in his Chamber, ſo as to over-hear their Converſation: That accordingly Mr. *Smith* came, and was concealed in the Deponent's Study; and *Fitzharris*, coming in ſoon after, asked the Deponent what he had done in the Matter: Whereupon he ſhewed him ſomething he had drawn up, which he approved, and gave him further Inſtructions, appointing to come again the next Day, againſt which Time the Deponent got both Mr. *Smith* and Sir *William Waller* concealed in his Chamber; and a little while after, *Fitzharris* came in, and the Deponent gave him a Copy of what he had drawn up; and the Deponent read another Copy, and *Fitzharris* added ſome Things, and put out others; and ſaid it muſt be written over fair, becauſe it was not fit for the *French* Ambaſſador's Confeſſor to read, who was to preſent it to the Ambaſſador: That the Deponent ſaid, It ſhould be done; but theſe were very treaſonable Things, and *Fitzharris* anſwered, The more treaſonable the better: It would ſet the People together by the Ears, and keep them claſhing and miſtruſting one another, while the *French* King would gain *Flanders*; and then he would make no Bones of *England*. That he bid the Deponent not be diſcouraged by the Danger; for when this was done, he ſhould have forty Guineas, and a Penſion afterwards of ſome thouſand Crowns; for *his Maſter the* French *King* was not ſuch a Niggard as the *Spaniard*.

Fitzharris demanded, If the Witneſs was not put upon this to trepan other People? To which *Everard* anſwered, He was put upon it by no body but *Fitzharris*; and that the Libel was drawn up in the Name of the Nonconformiſts, and to be put upon them.

Smith's Evidence.

Smith depoſed, That he was concealed in *Everard*'s Chamber in *Grays-Inn*; and *Fitzharris* coming in, *Everard* produced a Paper, and read it to *Fitzharris*, who ſaid, there muſt be ſome Things added: That he muſt repreſent the King a Papiſt, and might demonſtrate it from ſeveral Inſtances; as his eſpouſing the Duke of *York*'s Intereſt, and preferring his Creatures by Sea and Land, ſome of whom were known Papiſts: That it might be deduced alſo, from that Act the King procured, That it ſhould be Treaſon to call him Papiſt; which he did, that he might the more eaſily introduce Popery. He directed Mr. *Everard* to charge King *Charles* I. with promoting the *Iriſh* Rebellion, and *Charles* II. with furthering of it: Said, The *Oxford* Parliament was but a Sham; and ſuch a King was not to be truſted with the Lives, Liberties, or Religion, of a People; but the People ought to provide for themſelves, and blow the Trumpet boldly: And, as it was the People's Right to make Laws, and oppoſe a Popiſh Succeſſor, ſo they might depoſe a Popiſh Poſſeſſor. That he directed *Everard* to get an Intereſt in the Common Council, to put them upon addreſſing the Parliament; and promiſing to ſtand by them, with their Lives and Fortunes, againſt Popery, and arbitrary Power: And that if Parliamentary Ways failed, they would aſſiſt them any other Way; and if the King hindered the Duke of *York*'s coming to a Trial, they would take other Courſes. That *Everard* promiſed to purſue his Inſtructions; but ſaid he was in great Danger: *Fitzharris* anſwered, So was he and a great many more; and mentioned ſomething of a Reward.

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Sir William Waller's Evidence.

Sir *William Waller* depoſed, That he alſo was concealed in *Everard*'s Chamber, and heard the Converſation between him and *Fitzharris*, being of much the ſame Tenor as *Smith* had depoſed; adding, that *Fitzharris* told *Everard* he ſhould be preferred, and have a Penſion of three thouſand Crowns from the *French* Ambaſſador; and that they had employed a great many more in Buſineſſes of this Nature, to create Miſunderſtandings between the King and his People; by which Means the *French* would have an Opportunity of over-running *Flanders*, and then *England* would become an eaſy Morſel. *Fitzharris* demanding, If Sir *William* thought he had any treaſonable Deſign in this; he anſwered, He could ſay nothing to that; he only ſpoke to Matter of Fact. Then *Fitzharris* demanded, If this was the ſame Paper (the Libel) for which he was impeached in Parliament? To which Sir *William* anſwered, Yes; it was a Copy of it: He read it in the Houſe; and as ſoon as he had made his Report in the Houſe of theſe treaſonable Tranſactions, they immediately proceeded to the Impeachment.

Mr. Sollicitor replied, This Libel was ſpoken of in the Houſe; but it did not appear upon the Impeachment, That he was impeached upon that Libel.

The Priſoner ſaid, Had not Sir *William Waller* a Deſign to trepan me in this Matter? For I always looked upon him as my Enemy. Sir *William* anſwered, No indeed, not I.

Then the Libel was read, and the obnoxious Words compared with thoſe laid in the Indictment, and appeared to agree.

Sir *Philip Lloyd*, and Mr. *Bridgman* depoſed, That *Fitzharris* acknowledged Part of the Inſtructions he gave Mr. *Everard* to be his own Hand-writing.

Oates's Evidence for the Priſoner.

The Priſoner calling Mr. *Oates* as a Witneſs for him, *Oates* depoſed, That diſcourſing with *Everard* about the Libel, he acknowledged he wrote it, and took a great deal out of the intercepted Letter to Sir *Roger L'Eſtrange*: And asking what the Deſign of the Book was, *Everard* ſaid, It was to be ſent by the Penny-Poſt to the proteſting Lords, and the leading Men in the Houſe of Commons, that they might be taken up and ſearched, and have it found upon them; and added, That the Court had a Hand in it; the King had given *Fitzharris* Money, and would give him more, if he had Succeſs.

Corniſh's Evidence.

Sheriff *Corniſh* depoſed, That acquainting his Majeſty, the Priſoner *Fitzharris* was enclined to make a Diſcovery, his Majeſty ſaid, He had often had him before him and his Secretaries, and could diſcover nothing from him: That about three Months before, the Priſoner pretended he was in Purſuit of a Plot, and making great Proteſtations of Zeal for his Service, his Majeſty ſaid, He did countenance him, and gave him Money.

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Manſel's *Evidence.*

Colonel *Manſel* depoſed, That he was at the *Dog*-Tavern with Sir *William Waller*, and ſome other Company; and Sir *William* ſaid, When he acquainted the King with the Diſcovery, his Majeſty told him, he had done him the greateſt piece of Service that ever he had done him in his Life; and gave Sir *William* a great many Thanks; but ſoon after he left the King, two worthy Gentlemen told him, that the King ſaid, (He Sir *William*) had broken all his Meaſures, and he would have him taken off one way or other; and that Sir *William* ſaid, The Deſign was againſt the Proteſtant Party.

Mr. *Hunt* depoſed to the ſame Effect; adding, that the King ſaid, Sir *William Waller* was an inſufferable Vexation to him.

Bethel's

Sheriff *Bethel* depoſed, That *Everard* informed him he wrote the Libel himſelf.

Mrs. Wall's *Evidence.*

Mrs. *Wall*, Woman to the Dutcheſs of *Portſmouth*, being called as a Witneſs by *Fitzharris*, he demanded of her, If he had not conveyed treaſonable Papers to the King by her Means; and if he did not receive two hundred and fifty Pounds upon that Account about *Chriſtmas* was Twelve-month, when he gave her the Libel about the King and her Lady?

Mrs. *Wall* anſwered, Some ſuch Sum was paid the Priſoner, but not for a Libel: He was a Kinſman of the Deponent's, and ſhe took him for an honeſt Man, and was willing to do him what Kindneſs ſhe could, his Family having ſuffered much for the King: That Mr. *Fitzharris* telling her he could bring over ſome conſiderable People to the King's Intereſt, ſhe ſpoke to the Secretaries of State, and to the Dutcheſs of *Portſmouth* for him; and within about ſix Months Time, ſhe did get the Money he mentioned.

The Priſoner demanding, If he did not come to her the *Wedneſday* before he was taken, and tell her he deſired to ſpeak with the King, for he had a Libel to preſent him; Mrs *Wall* anſwered, He came to her the *Thurſday* before he was taken, at nine at Night; and ſaid, He believed, if he might ſee the King, he could do him Service; but mentioned no Libel: That he was a Roman Catholick, and therefore they thought it dangerous to let him go near the King.

Mr. Attorney demanding if he was ever admitted to the King, Mrs. *Wall* anſwered, Never: He had indeed been with her in a Room when the King paſſed by; but his Majeſty never took any Notice of him, or ſpoke with him; nor did the King, or the Dutcheſs of *Portſmouth*, give him any other Money than that already mentioned.

The Chief Juſtice demanding, On what Account that Money was paid; Mrs. *Wall* anſwered, Since they preſſed her to declare it, it was for bringing in the Lord *Howard* of *Eſcrick:* That, and his Poverty, together.

Mr. Serjeant *Jeffries* demanding, What Character the Priſoner gave *Everard*; Mrs. *Wall* anſwered, He ſaid he was an honeſt Man, and asked if ſhe would be acquainted with him? but ſhe ſaid No; he was an Informer, and had a knaviſh Reputation. That the Priſoner deſiring her to tell the Duke, he would firſt bring the Lord *Howard* to him, and then to the King; the Duke anſwered, the Priſoner was a Raſcal, and he would not meddle with him.

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Then the Priſoner appealed to Lord *Howard*, if he did not ſpeak to the Lady *Portſmouth* for Money for him; and the Lord *Howard* anſwered, he did; and Mrs. *Wall* ſaid, My Lord did indeed ſecond her Lady, to get him ſome Charity.

Dutcheſs of Portſmouth's *Evidence.*

Cowling depoſed, That Mrs *Wall* told him *Fitzharris* came to her, two or three Nights before he was taken up, and deſired Admiſſion to the King; and ſhe deſired he would write down what he had to ſay; which he would not, and ſhe perſiſted to refuſe him Admiſſion: Her Blood chilled; ſhe was afraid he was come to do the King ſome Miſchief.

Lord Howard's *Evidence.*

The Lord *Howard* depoſed, That in the Beginning of *October* laſt, *Fitzharris* applied himſelf to his Lordſhip in the Name of his Majeſty, deſiring he would wait on the King; but he declined it, leſt he ſhould be put upon declaring his Sentiments, which were not agreeable to his Majeſty's: That the Priſoner then deſired he would wait on the Dutcheſs of *Portſmouth*, who would be a good Inſtrument to the King, in perſuading him to a good Opinion of the approaching Parliament; and the Priſoner ſaid, He could aſſure him, ſhe was in the ſame Intereſt he looked towards; ſhe was no Friend to the Duke of *York:* And the Deponent was prevailed on to wait on the Dutcheſs, where he found his Majeſty; but if the 250 Pounds were given the Priſoner, for bringing him thither, his Majeſty, he believed, did not think he deſerved it at that Time: That he had an Opportunity of ſeeing the King again, about ten Days after, by *Fitzharris*'s Means; and after the Parliament, he waited on the Dutcheſs of *Portſmouth*, and told her, he was ſenſible ſhe had endeavoured, as much as lay in her Power, to perſuade the King to a good Opinion of the Parliament; and to give them Time for ſitting, and an Opportunity of explaining their Intentions for his Service: And when he took his Leave, he requeſted the Dutcheſs to repreſent the Priſoner's Condition to the King, ſince by his Means he had the Honour to be ſhewed the Way to her Grace's Lodgings.

Fitzharris' *proceeds in his Defence.*

That the Night before the Lord *Stafford* was condemned, the Priſoner came to his Lordſhip, as from the King; and ſaid, His Majeſty would take it as a great Inſtance of his Reſignation to his Pleaſure, and he might promiſe himſelf all the Kindneſs a Prince could ſhew his Subject, if he would give his Vote next Day for the Lord *Stafford:* To which he (his Lordſhip) anſwered, He had all the Obligations of Blood and Nature, to diſpoſe him to favour the Lord *Stafford*; but, though he was wavering in his Thoughts before, now by the Grace of God he would go, though he was carried on Men's Backs, to the Houſe: He ſaw it was the Concern of the Proteſtant Cauſe; and if all the Relations he had were melted down into my Lord *Stafford*, if he had but Breath enough to pronounce his Doom, he ſhould die.

The Secretary's Evidence.

Mr. Secretary *Jenkins* appearing as a Witneſs for the Priſoner, he demanded, If the King did not own he had employed him: To which the Secretary anſwered, He did not remember

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mem ber the King ever owned he had made uſe of him: Then he asked the Lord *Conway*, If he did not remember it: The Lord *Conway* anſwered, No; but he had heard his Majeſty ſay, he formerly employed him in ſome trifling Things: That the King never ſpoke to him, till the Day after he was taken up.

Dutcheſs of Portſmouth's Evidence.

The Dutcheſs of *Portſmouth* appearing, *Fitzharris* demanded of her, If he was not employed to bring ſeveral Papers to the King, particularly the Impeachment againſt her Grace; and if ſhe did not tell him, it was a great Piece of Service to bring ſuch Papers; and if he could find Men fit for that Purpoſe, he would do the King good Service; and if he did not acquaint her Grace, *he knew one* Everard, *who knew all the Clubs in the City, and could tell the Deſigns of the Lord* Shaftesbury *and all his Party*, and if her Grace did not encourage him to go on; and by her Means he came to ſpeak to the King about it.

The Dutcheſs anſwered, She was concerned in no Sort of Buſineſs with him; only he deſired her to give his Majeſty a Petition to get his Eſtate in *Ireland*; and ſhe did ſpeak to the King three or four Times about it: That ſhe never had any Papers from him; but the Money was given him in Charity: To which the Priſoner replied, He was ſorry her Grace was ſo much under the Influence of Mrs. *Wall:* The Dutcheſs ſaid, She did not come there to wrangle with him: If ſhe could do him any Good ſhe would; but ſhe did not ſee how ſhe could be further ſerviceable to him; and then went out of Court.

Fitzharris' proceeds in his Defence.

Fitzharris proceeding in his Defence, ſaid, He could not forbear complaining of the hard Uſage he had received; greater Oppreſſions had not been known: He had been a cloſe Priſoner, and no manner of Helps allowed him to make his Defence: And though Lady *Portſmouth*, Mrs. *Wall*, and the reſt, were pleaſed to ſay, he was not employed, or received Money for ſecret Services, it was well known he did ſo: And though Mr. *Everard* would make a *French* Story of it now, he knew it was otherwiſe. He affirmed he was well acquainted with the Lords *Shaftesbury* and *Howard*, and knew all their Clubs and Intrigues in the City: And he (*Fitzharris*) told him, it would be of the greateſt Conſequence to continue his Diſcoveries: That he (*Fitzharris*) never was in the *French* Intereſt, though he humoured *Everard*'s Diſcourſe, that he might reduce the Paper he accuſed him of under ſome Heads; and he no ſooner had it, but he carried it to *White-Hall:* And whereas *Everard* ſaid, He was to have forty Guineas, it was but forty Shillings he deſired, in regard to his Poverty: That when he came to *White-Hall*, he ſhewed the Paper to a Gentleman, who was to have given it to the Lord *Clarendon*; but before that Lord had it, he was taken up. What he had done, was with a Deſign to ſerve the King, in diſcovering the Deſigns againſt him; and he was employed, though both the Secretaries were ſo unkind as to deny it: He was not aſhamed to ſay it, though his Life were loſt upon it: He hoped the Jury would conſider, theſe were great Perſons he had to do with; and in Matters of State, it was hard to get any thing out of them, but what was for their Advantage; and thus he was left in a ſad Condition: He ſaid, He muſt inſiſt upon it, if the Jury brought him in guilty, they ſhed his Blood, and overthrew the Law and Courſe of Parliaments; and deſired, he might deliver a Copy of the Impeachment, and of the Votes of the Houſe of Commons, to the Jury; but the Chief Juſtice told him, That could not be.

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The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in ſumming up the Evidence, obſerved, That the Libel contained treaſonable Matter: That a more virulent and villanous Book was never written; which tended to defame the King and his Anceſtors, to blaſt all that came after him, and incite the People to Sedition and Rebellion: That this was a Piece of Art of the Jeſuits, which exceeded all they had done before; and they had found an apt Inſtrument, an *Iriſh* Papiſt, one who had been concerned with them in ſeveral Plots and Conſpiracies of this Nature: That the Evidence againſt the Priſoner, was as ſtrong as ever was given againſt a Traitor: It appeared by the Priſoner's Witneſſes, that the King had given him Money in Charity; and he inſinuated by way of Defence, That the King gave it him to trepan his Subjects againſt himſelf; to endanger his Crown, and all he had in the World; for which no colourable Deſign could be imagined: That as to the Impeachment, which the Priſoner ſo much inſiſted upon, that Matter had been pleaded to their Juriſdiction, and was over-ruled; they were to have no Conſideration of it now: They were ſworn to one Point, namely, Whether the Priſoner was guilty of this Treaſon, or not; and as to what he fondly talked of, concerning his Blood lying at their Doors, he thought ſuch Inſinuations would not weigh with Men of Underſtanding.

Some Scruples of the Jury.

Mr. *Johnſon*, the Foreman, ſaid, My Lord, there is a Vote of the Houſe of Commons, that ſays he ſhall not be tried by an inferior Court: We take ourſelves to be Judges of this Man: It is the Office of the Jury to acquit or condemn him according to the Evidence: Now, if we ſhould acquit him in this Caſe, what Aſſurance have we he ſhall be acquitted? We ſhall but forejudge a Parliamentary Cauſe; therefore I do not know how far we are compellable by Law, to give a Verdict in this Caſe.

The Chief Juſtice anſwered, As to the Juriſdiction of the Court, it is not at all before you; and as to the Vote of the Houſe of Commons, if there be any ſuch, That cannot alter the Laws of the Land, or juſtify any of us, in departing from our Duties, any more than a Letter or Mandate from the Prince; we are to take no more Notice of the one, than of the other: Beſides, this Doubt was moved to us by the Grand Jury: And, to take away all Scruples, all the Judges of *England* debated the Matter; and it was our unanimous Opinion, We had a Juriſdiction to try this Man.

The reſt of the Judges declared, that this was their Opinion.

Practices to terrify them.

While this Cauſe was trying, Papers were continually put into the Hands of the Jury, diſſuading them from finding the Priſoner guilty;

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guilty; threatning them if they did, and telling them they muſt anſwer it in Parliament; and, that the Nation would never deſiſt, till they had ruined them and their Families: And as they withdrew, ſome that ſtood by ſaid, *Find him guilty if you dare.*

The Priſoner convicted,

However, the Jury, having withdrawn about half an hour, returned with their Verdict, That the Priſoner was GUILTY. Whereupon Mr. Attorney moved for Judgment; but the Court bid him move it another Day.

and condemned.

Fitzharris being brought to the Bar again the 15th of *June*, to receive Sentence, deſired he might be tranſported; but the Court acquainted him, they could not order that; and the Chief Juſtice pronounced the uſual Sentence in Caſes of High-Treaſon: And on the twenty-ſecond of *June*, a Writ was iſſued out of the *King's-Bench* to the Lieutenant of the Tower, reciting the Judgment, and commanding the Lieutenant to deliver the Priſoner to the Sheriff of *Middleſex*, the firſt of *July* following; and another Writ to the Sheriff to receive him, and cauſe him to be executed according to the Sentence: And in the mean time the Priſoner made the following Confeſſion, *viz.*

The Confeſſion of Edward Fitzharris *Eſq; written with his own Hand, and delivered to Dr.* Hawkins, *Miniſter of the Tower*, July 1. 1681, *being the Day of his Execution.*

" I *Edward Fitzharris* having been indicted of High-Treaſon, for endeavouring to dethrone the King, was thereupon found guilty, and Sentence of Death paſſed on me. I the aforeſaid *Edward Fitzharris*, do voluntarily and freely, without any Hopes to ſave my Life, but as a dying Man, and to diſcharge my Conſcience towards God, and for the better Satisfaction of the World, make this Declaration following, in the Preſence of God, and unto Dr. *Francis Hawkins*, Chaplain of the *Tower* of *London*.

" I do profeſs and declare, my Religion in the general, to be that which hath been truly and anciently delivered in the firſt four general Councils; and in particular, my Belief is, that true Faith of a Chriſtian, briefly contained in thoſe three Creeds, commonly called, The *Apoſtles Creed*, St. *Athanaſius*'s, and, *The Nicene Creeds:* And I die a Member, and in the Communion, of *Chriſt*'s Holy Catholick Church, hoping for Mercy, through the alone Merits of the Paſſion of our Lord and Saviour *Jeſus Chriſt*.

" I do alſo confeſs and declare, As to the Crimes which I die for, I was no farther concerned in the Libel, than as employed to give the King Notice of what Libels, or other Accuſations, there were againſt him; and, to this Intent, and no other, I endeavoured to get this Libel; which, at length, I did from Mr. *Everard*, all written under his own Hand, and carried it to Mrs. *Wall*, by whoſe Means I conveyed all Matters of this, or the like Nature, to the King. I told her, I had a Buſineſs of great Conſequence to acquaint the King with; but ſhe anſwered me, That my Lord *Sunderland* being out, there would be no Money had for ſecret Service, and adviſed me to go to the Lord *Clarendon*, or *Hyde*; but before I could do this, I was taken. As for that Part of the Libel which I left with *Everard*, as a Pledge to aſſure him I would not betray him, I received it of the Lord *Howard:* And the Money I receiv'd from the King, was for bringing a Libel called, *The King unveil'd and the Lady* Portſmouth's *Articles*. I call God to Witneſs, I never had a Farthing Charity from the King.

" I do further Confeſs and declare, That the Lord *Howard* told me of a Deſign to ſeize upon the King's Perſon, and to carry him into the City, and there detain him, till he had condeſcended to their Deſires. *Heyns* and myſelf were privy to this Deſign, and had ſeveral Meetings with the Lord *Howard*; and as an Encouragement, the Lord *Howard* aſſured us of breaking the Settlement of *Ireland*, taking off the Additional Revenue of the Biſhops, forty-nine Men and Grantees, whoſe Eſtates were to be ſhared amongſt the Party.

" I do confeſs and declare, That while I was in *Newgate*, the Sheriffs *Bethel* and *Corniſh* came to me, with a Token from the Lord *Howard*, which I knew to be true, and brought Heads with them from *Everard*, wherein he accuſed me of being a Court-Emiſſary, or *Yorkiſt*, ſet on by the King, to put the Libel into Proteſtants Houſes to trepan them: But I declare upon my Death, I had no ſuch Intent; nor do I know any ſuch thing. The Sheriffs likewiſe told me, I was to be tried within three or four Days: That the People would proſecute me, and the Parliament would impeach me; and that nothing would ſave my Life, but diſcovering the Popiſh Plot; and then the ſaid Sheriffs gave me great Encouragement from my Lord *Howard*, that, if I would declare, that I believed ſo much of the Plot as amounted to the introducing the *R. C.* (Royal *Charles*,) or, if I could find out any that could criminate the Queen R. H. (Royal Highneſs,) or ſo much as make a plauſible Story to confirm the Plot; that the Parliament would reſtore me to my Father's Eſtate, with the Profits thereof, ſince his Majeſty's Reſtoration.

" I finding myſelf in the Condition I was in *Newgate*; fettered, moneyleſs, and friendleſs; my Wife ready to lie in, without any Subſiſtence; my Children in a miſerable Condition, and muſt needs be in a worſe by my Death; and I could ſee no other Refuge for my Life, but complying with them: So not with any ambitious Intent, but to ſave my Life, I did comply. The Sheriffs brought Inſtructions, which, they ſaid, came from the Lords and Commons, who met that Day, in order to addreſs

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" dreſs the King in my Behalf, (if I ſhould " confirm the Inſtructions ;) and they made " Uſe of the Lord *Shaftesbury*'s Name, and " others, what Advantage I might have " thereby. At the firſt I made a formal " Story concerning the Plot, which was not " prejudicial to any Body; but moſt relating " to general Heads, known publickly: Up- " on which Mr. *Corniſh* told me, Theſe " were Things cried about the Streets two " Years ago. I replied, I could ſay no more: " Mr. Sheriff ſaid, He was ſorry for me with " all his Heart; but thought I could ſay " more if I would, and preſſed me heard to " ſpeak to ſeveral Heads; unto which, un- " leſs I ſpoke, he ſaid, there was no hope of " Life. The Heads I was to ſpeak to were, " what the Examination taken by Sir *Robert* " *Clayton* and Sir *George Treby* contains, and " a great deal more that I did not ſay then, " relating to the Queen, R. H. Earl of *Dan-* " *by* declaring *French* Penſioners, Lords " *Halifax*, *Hyde*, *Clarendon*, *Feverſham*, " *Seymour*, and others; the burning the " Fleet, Forts and Governments in *Popiſh* " Hands; Meal-Tub Plot; Prentices Plot; " the Contrivance of the Libel on Lady " *Portſmouth*, being a *French* Deſign to de- " ſtroy Proteſtants. Theſe and many other " Heads, were brought me by the She- " riffs.

" I do further confeſs and declare, That " Sir *Robert Clayton* and Sir *George Treby* " coming to me to examine me, Sir *Robert* " *Clayton* asked me, What I could ſay, con- " cerning *Godfrey*'s Murder? I anſwered, " Something. He replied, It may be you " are in Confuſion; recollect yourſelf. And " what I ſaid concerning Father *Patrick* was " forced out of me, and is not true. Sir " *George Treby* was with me three Hours, " or thereabouts, and preſſed me to ſay ſome- " thing concerning *Godfrey*'s Death; and " ſaid, unleſs I would ſpeak to that Mur- " der, I could ſay nothing: Whereupon I " ſaid, ſomething I had from others. He " asked me, if I could ſay no more: I re- " plied, Is not this enough to ſave my Life? " Am not I Rogue enough? The Recorder " *(Treby)* hereupon ſwore, Zounds, What " were you ever, but a Rogue? Then the " Recorder entered upon the Heads of the " Examination; which being done, he told " me, All this would not ſave my Life, un- " leſs I would ſpeak to the Libel, which was " a Court Trick; and it was not for noth- " ing I had been ſo often ſeen at the La- " dy *Portſmouth*'s. Lord *Shaftesbury* ſaid, " You know more of theſe Matters than any " Man: Sir *George (Treby)* would have me " ſpeak to the Conſult: That the Duke was " at it, the Lords *Bellaſis*, *Arundel*, and " *Powis* were at it; you have ſeen them go " to it at *St. James*'s; without Doubt they " were there: Do but you ſay it, we have " thoſe that will ſwear it.

" I do further declare and confeſs, That " what I ſaid againſt the Queen and the " Duke, I was put upon, in the Matter of " *Godfrey*'s Murder; and do farther declare, " That what I ſwore againſt the Earl of " *Danby*, the threatning Words that were " uttered, I did (to the beſt of my Remem- " brance) hear; but whom they concerned, " I could not well know, by what my " Lord himſelf ſaid: And what *de Puis* told " me, concerning my Lord of *Danby*, I do " believe was ſpoken out of ill Will; and " what I ſaid againſt him was, to ſtave off " my Trial till a Parliament; and they were " the more deſirous to accuſe the Lord *Danby* " of *Godfrey*'s Murder, becauſe the Crime of " Murder is not inſerted in his Pardon: I " am ſorry for what I ſaid againſt the Queen, " his Royal Highneſs, and the Earl of *Dan-* " *by:* I deſire God to forgive me the Wrong " I did them, and do heartily beg their Par- " don.

" I do further declare and proteſt, That " this Confeſſion and Declaration of mine, I " own ſincerely, as a dying Man, and not " to ſave my Life: and I call God and all " his Angels to witneſs the Truth of it; and " I renounce Mercy at the Hands of God " Almighty, if this be not true.

" And I do further declare and proteſt, as " a dying Man, unto *James Walmeſly*, *Ed-* " *ward Pattel*, and *Mary Walmeſly*, That " I have made this Confeſſion and Declaration " unto Dr. *Hawkins* freely, and of my own " voluntary Accord, without any Manner " of Promiſe made, or Hopes given me, by " him from the King, of ſaving my Life by " this Confeſſion; I having given him to un- " derſtand beforehand, they were Matters " of Conſequence, and ſuch as chiefly con- " cerned the Good of the King and King- " dom.

" I give the Doctor my hearty Thanks, " for all his Prayers, Counſel, and charita- " ble Offices he hath done me; and I pray " God to bleſs him for ever for it. I forgive " all the World, and deſire all the World to " forgive me; and the Lord have Mercy on " my Soul.

EDWARD FITZHARRIS."

This Proteſtation was made by Mr. *Fitz-* *harris*, *July* 1. between the Hours of Seven and Eight in the Morning, in the Preſence and Hearing of us, whoſe names are under-written.

James Walmeſly,
Edward Pattel,
Mary Walmeſly,

" I do hereby declare, That Mr. *Fitzhar-* " *ris*, before he began to write any Part " of this Narrative, was more than once " aſſured by me, that there was no hope of " his Life, that I knew of, whatever he " ſhould ſay; nor of his Salvation, if he " ſhould ſay any thing he knew to be falſe; " of which he being thoroughly ſenſible, and " perfectly convinced, proceeded to write the " Narrative aforeſaid: And I continuing to " admoniſh him upon every Point that was " material, not to ſay any Thing but what " was exactly true; he took occaſion at ſe- " veral Periods of this Narrative to kneel " down, and ſolemnly proteſt the Truth of

" every

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" every Word therein contained: And this " I again declare, upon the Faith of a Chri- " ſtian, and the Word of a Miniſter of the " Goſpel.

FRANCIS HAWKINS."

The ſame Morning this Confeſſion was ſigned, *viz.* on *July* 1. 1681. the Sheriffs of *London* and *Middleſex*, *Slingsby Bethel*, and *Henry Corniſh*, received the Priſoner *Fitzharris* from the Lieutenant of the *Tower*; and having ſet him on a Sledge, he was drawn from the *Tower* to *Newgate*, where he overtook Dr. *Plunket* in another Sledge; and they were drawn both together, from thence to the Gallows at *Tyburn*, where when they arrived, the Sheriffs demanded of *Fitzharris*, What he knew of the Popiſh Plot? But he referred them to the Paper he had left with Dr. *Hawkins*. Then they enquired of the Doctor, who attended the Execution, what Paper that was? But the Doctor, having an Intimation, they deſigned to ſuppreſs his Confeſſion, did not produce it: On the contrary, he deſired the dying Man to declare, *If all that he had left with him was true?* Whereupon the Sheriffs ſaid, He had nothing to do, to put Queſtions there: Dr. *Hawkins* replied, Shall I not bid the dying Man ſpeak the Truth? And *Fitzharris* turning to the People, ſaid, *Yes it is true*; and then addreſſing himſelf to the People, ſaid,

Fitzharris's Speech at his Execution.

" GOOD People, this infamous kind " of Death is more irkſome to me " than Death itſelf: Such Judgments " as theſe, my Sins againſt God may juſt- " ly bring upon me; and I do moſt hum- " bly ſubmit to it: But as to the Crimes " which I now die for, I take God to witneſs, " I was no further concerned in that Libel, " than to diſcover to the King, what Practi- " ces of that Kind were againſt him; being " employed to that End, though thoſe that " employed me, refuſed to do me Juſtice at " my Trial: And I call God to witneſs, I " never had a Farthing of Money of the " King in my Life, but on the Account of " the like Service: And as to the Witneſſes " that have ſworn againſt me, I do here ſo- " lemnly declare now at my Death, that I " have not ſeen the *French* Ambaſſador ſince " the breaking out of the Plot; neither have " I had any Acquaintance with him: And " as to his Confeſſor, I never ſpoke to him " in my Life; neither have I had any Deal- " ings, either directly or indirectly, in my " Life, with them; though Sir *William* " *Waller*, and the reſt, ſwore moſt falſly to " the contrary: And how likely it is, the " *French* Ambaſſador would give 3,000 " Crowns for writing that Libel, I leave the " World to judge. What I may further de- " clare, I have left with Dr. *Hawkins*. I " forgive all the World, and hope God will " forgive me: I beg the Prayers of all good " People, for a happy Paſſage into the other " World."

Then having finiſhed his Devotions, in which he was aſſiſted by Dr. *Hawkins*; the Executioner did his Office.

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Remarks on Fitzharris's Trial.

The Proceedings againſt *Fitzharris*, are generally looked upon as very myſterious, which is not to be wondered at; when *Shaftesbury*, and his Emiſſaries Lord *Howard*, *Clayton*, *Treby*, *Bethel*, *Corniſh*, and many more of that ſubtil Faction, uſed every Artifice to render them ſo. Upon due Conſideration of the whole it appears to me, that *Fitzharris* was employed by the Court, to diſcover what Deſigns were carrying on againſt the Government; and more particularly by the City of *London*; and to bring the King ſuch ſeditious and traitorous Libels as they diſperſed, to render him odious to the People, and incite an Inſurrection; which *Fitzharris* found an Opportunity of doing, by renewing his Acquaintance with *Everard*, who had been with him in the *French* Service, and was at this Time employed by *Shaftesbury* and the Faction, in writing and diſperſing ſcandalous and treaſonable Papers, reflecting on the King and the Adminiſtration: And I make no Doubt, but *Fitzharris*, in order to inſinuate himſelf into the good Opinion of *Everard* and his Maſters, pretended to be no leſs diſaffected than they were; ſuggeſting that the Court neglected to reſtore him his Father's Eſtate, and had no Regard to the Sufferings of his Family for the Crown; and there is as little Doubt to be made, that they did for ſome Time confide in him, and make uſe of his Aſſiſtance in framing their Libels; and this gained him an Opportunity of diſcovering many of their dark Intrigues; but it being obſerved, that he was often at the Dutcheſs of *Portſmouth*'s Lodgings, they took the Alarm, and at length diſcovered he was a Court-Emiſſary: Whereupon they reſolved to be before-hand with him; and leſt he ſhould be made a Witneſs againſt them, cauſed him to be taken up, and charged with compoſing thoſe very treaſonable Libels, which they themſelves had framed; having firſt trepanned him, as he obſerved at his Trial, by placing ſome of their own Creatures in *Everard*'s Cloſet, to be Witneſſes of their Converſation, which might be treaſonable enough; as it was *Fitzharris*'s Buſineſs to perſonate the Malcontent, and pretend to be one of their Party, he might offer his Opinion of the Libel, the better to conceal his Intentions. But I am fully convinced, that the Libel was, in the main, drawn by Lord *Shaftesbury*, *Howard*, or ſome of the Faction; becauſe it contained little elſe but ſuch ſcandalous Reflections on the Government, as they had inculcated and publiſhed in their Writings and Converſation, for ſeveral Years paſt.

By charging *Fitzharris* with being the Author of this Libel, they did not only prevent his giving Evidence againſt their Party; but, by throwing him into *Newgate*, of which their Friends, *Bethel* and *Corniſh* the two Sheriffs, were Governors, they had an Opportunity of practiſing upon this unhappy Wretch, and ſuborning him to be a Witneſs of the Popiſh Plot, and *Godfrey*'s Murder; and hoped to prevail on him to accuſe the King himſelf, as well as the Queen and Duke; which, if they could have done, they would probably have ſpirited up the People immediately into another Rebellion, and depoſed the then *preſent Poſſeſſor* of the Throne: They would not have contented

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ſelves to be made inſtrumental in deſtroying innocent Men: They would no longer connive at the offering Rewards and Protection to raſcally Knights of the Poſt to revile his Majeſty, and the Royal Family, and incite another Rebellion, by rendring them odious to the People; and the King, awakened out of his Slumber, by the frequent and formidable Attacks of the Faction, at length took the Reins of Government into his Hands, and ſhewed his Enemies, that when he was pleaſed to uſe Application, he had a ſuperior Genius, and knew how to defeat the Schemes of their moſt artful Leaders, who ſaw, not long after, that their Flight alone could ſecure them againſt his juſt Reſentment.

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The Trial of GEORGE BUSBY, Clerk, for *High Treaſon*, at the Aſſizes for the County of *Derby*, 25 *July*, 1681. 33 *Car.* II.

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Busby's Trial.

The Indictment.

THE Indictment charges him with High Treaſon; for that, being a Subject of *England*, he remained at *Weſt-Hallam* in the ſaid County of *Derby*, after having accepted Popiſh Orders, contrary to the Statute of 1 *Eliz.*

The King's Council, in opening the Indictment, ſuggeſted, that the Priſoner was concerned in the Popiſh Plot; and, that they would do their Country more Service, by convicting one Prieſt, than twenty Felons.

The Evidence.

The King's Witneſſes being called, five or ſix of them poſitively ſwore, they had ſeen the Priſoner ſay Maſs, give the Sacrament, chriſten, marry, give Abſolution, and perform other Parts of the Prieſtly Office.

The Priſoner's Defence.

The Priſoner, in his Defence, ſaid, That he was not born in *England*, but at *Bruſſels*, his Father and Mother going over thither at the Beginning of the Grand Rebellion; and produced Witneſſes, who depoſed, that they had ſearched the Regiſter of *Hallam*, and found ſeveral of the Priſoner's Brothers and Siſters born there; but his Name was not in the Regiſter.

In Anſwer to which, the Court obſerved, If it ſhould be admitted he was born at *Bruſſels*, that would not avail him, becauſe of the Statute that had naturalized all that were born of *Engliſh* Parents, beyond Sea, during the late Rebellion.

The reſt of his Defence conſiſted in obſerving, That there was no poſitive Proof of his being a Prieſt, or of his officiating as ſuch; becauſe the Witneſſes did not underſtand *Latin*, and conſequently, could not tell whether he ſaid Maſs, or not. To which it was replied, That he had given no Anſwer to his Chriſtening and Marrying People, and ſeveral other Acts, which could be done only by Prieſts. And the Jury thereupon found him *Guilty*, as Mr. Baron *Street* had directed them; and the Judge afterwards pronounced Sentence on him as a Traitor: But informed him at the ſame Time, that he was commanded to reprieve him; and accordingly Mr. *Busby* was reprieved from Time to Time, and never executed.

He is convicted;

but reprieved.

Remarks on Busby's Trial.

The Popiſh Prieſts, in Queen *Elizabeth*'s Reign, having been very buſy in promoting and encouraging Conſpiracies againſt her, it was thought fit to make a Statute, That it ſhould be Treaſon for an *Engliſh* Prieſt to remain in the Queen's Dominions, after he had accepted Popiſh Orders; but this is generally agreed to be made *in terrorem*, and never deſign'd to be put in Execution, where they behaved themſelves loyally and peaceably. But we find the Saints in King *Charles*'s Reign endeavouring, directly contrary to the true Intent of the Act, to put it in Execution againſt thoſe who had been moſt eminent for their Loyalty, and the greateſt Sufferers for him and his Father; and though the King could not prevent their being tried, we find he skreened this Gentleman, and all thoſe that were tried at *London* upon this Act, from their Fury, by granting them Pardons, or at leaſt indefinite Reprieves: But ſome there were, in the more remote Parts of the Kingdom, that ſuffered purely for being Popiſh Prieſts, as it appears by ſome former Proceedings.

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The Trial of STEPHEN COLLEDGE, Carpenter, (called the *Proteſtant Joyner,*) for *High Treaſon*, by a Special Commiſſion of *Oyer* and *Terminer*, at *Oxford*, 17th of *Auguſt*, 1681. 33 *Car.* II.

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Colledge's Trial.

The Indictment.

THE Indictment charges, that the Priſoner did, on the 10th of *March*, in the 33d Year of the King, at *Oxford*, maliciouſly, and traiterouſly, compaſs and imagine the Death of his Majeſty: To incite a Rebellion, levy War againſt him, and ſubvert the Government: And that, to effect his ſaid traiterous Purpoſes, he did, on the ſaid 10th of *March*, at *Oxford* aforeſaid, prepare Arms, arm himſelf, and adviſed, and incited, one *Edward Turbervile*, and others, to arm themſelves againſt the King; declaring he deſigned to ſeize the King's Perſon, at *Oxford*, aforeſaid: And, at the Time and Place aforeſaid, in the hearing of many of the King's Subjects, maliciouſly and traiterouſly declared, *That nothing of Good was to be expected from the King; and that the King minded nothing but Beaſtlineſs, and the Deſtruction of his People, and to eſtabliſh Popery and Arbitrary Power.*

A Diſpute about his Papers.

The Priſoner refuſed to plead, till his Papers were delivered him, which were taken from him as he came into Court; for this,

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he ſaid, rendered him incapable of making his Defence: But the Court inſiſting on his pleading, before they made any Order in the Matter, he, at length, pleaded, he was not guilty, in Manner and Form as it was laid in the Indictment.

Then the Chief Juſtice ſaid, If there were any Thing in thoſe Papers, that was neceſſary for his Defence, it would be hard to deny him them. Mr. Attorney anſwered, when he came to Priſon, he had no Papers; and, he was informed, *Aaron Smith*, the Solicitor, had delivered them to him.

The Priſoner replied, There were Directions in the Papers, how to govern himſelf in his Defence; and Inſtructions, to tell him what the Law allowed him.

Mr. Attorney informed the Court, That there was a Liſt of the Jurors among the Papers, with Marks ſet upon them, who were good Men, who were bad, and who were moderate Men; and there was a Liſt of the Witneſſes the Party had picked up for him: Then the Chief Juſtice ordered, that the laſt Paper ſhould be delivered him immediately; and he thought the reſt of the Papers ſhould be put into ſome ſafe Hand, that the Priſoner might make uſe of them.

Mr. Attorney ſaid, That was the ſame Thing as to allow him Counſel, if his buſy Solicitor had procured the Advice of Counſel, and then communicated it to him.

Colledge replied, If they took away all his Helps, they might as well condemn him without a Trial.

Then Mr. Attorney deſired his Lordſhip would look upon the Papers, which he did; and there was one, called the Speech, which, the Chief Juſtice ſaid, ought to be ſuppreſſed, and Enquiry made, how it came to his Hands: And *Aaron Smith* being called, it was demanded of him, if he delivered thoſe Papers to the Priſoner? To which *Smith* anſwered, No-body was bound to accuſe himſelf: Whereupon the Chief Juſtice ordered him to enter into a Recognizance, to be forth-coming during the Seſſion. Whereupon *Smith* ſaid, It was Time to have a Care, when their Lives, their Eſtates, and all were beſet; which the Court reſented, and ſaid, he reflected on the Juſtice of the Nation.

Colledge inſiſting ſtill, that he might have his Papers, the Chief Juſtice ſaid, they had ordered him the Liſt of the Witneſſes; and, as for the Inſtructions in Point of Law, he might have had them, if they had been written in his own Name, in the firſt Perſon; but when they appeared to be written by another, and directed him what to do, This was to allow him Counſel in an indirect Way, which the Law did not allow: However, they had rather allow him too much, than too little; and the Chief Juſtice ordered him a Copy of the Inſtructions, leaving out what was ſcandalous.

The King's Counſel calling their Witneſſes, Mr. *Dugdale* was firſt ſworn, who had been one of the principal Witneſſes againſt Lord *Stafford*; and whoſe Credit *Colledge* endeavoured to ſupport at that Trial, by teſtifying, he was an honeſt Man.

1681. 33 Car. II. Dugdale's Evidence againſt him.

Dugdale depoſed, That the Priſoner ſeemed at ſome Times, to be mightily bent againſt Popery; and would ſay, when the King did not proſecute Papiſts according to his Mind, *That the King was a Papiſt himſelf, and as deep in the Plot as any of them all, and had a Hand in* Godfrey's *Death:* And that he told the Deponent, at *Oxford*, *That there was nothing to be expected from the King, but the introducing Popery, and Arbitrary Government:* And that, preſently after the King went out of *Oxford*, *Colledge* went to a Barber's Shop, within the *Angel-Inn*, and, as he was charging his Piſtols, ſaid, *Rowley is gone: The Rogue was afraid of himſelf, and has ſhirked away:* And that *Rowley* was the Name he uſually gave the King: That the Priſoner ſaid, at other Times, *There was no Truſt to be put in the King; it was the People they muſt truſt to: They muſt look to arm themſelves; he would arm himſelf:* And in *Oxford*, he ſaid, *he had ſeveral ſtout Men that would ſtand by him in it: Their Intention was to root out Popery; by which he always meant the Eſtabliſhed Church.* And, when Dr. *Tongue* was at his Houſe, he ſaid, he was forced to be at great Charges, and to neglect his Buſineſs, to keep him in Order; for, if he had not, *the Rogue had a Mind to fling all upon the Proteſtants, that is, the Diſſenters; for he did not count the Church of* England *ſo.*

It being demanded, who was to be concerned with *Colledge?* *Dugdale* anſwered, That *Colledge* told him, he brought Capt. *Clinton*, Capt. *Brown*, and Don *Lewis*, to Town with him, expecting there would be a Riſing: That they would defend the ProteſtantReligion againſt the King, and all his Adherents: That, if the King did not yield to the Parliament, he ſhould be forced to it. This he ſaid at *Oxford:* And, at *London*, he heard him ſay, he expected there would be ſomething done at *Oxford*; and he would go thither with his Horſe and Arms; and the Gentlemen he already mentioned would go with him; and, let them begin when they would; he did not care how ſoon his Party was the greateſt Party.

That the Priſoner gave the Deponent as much Ribbon, at *London*, as came to forty Shillings, with the Words, *No Popery*, *No Slavery*, wrought in it, to diſtribute among their Friends, the Diſſenters, in the Country, that they might know one another: That the Deponent promiſed to come to *Oxford* with the Priſoner, and did ſo: And being with ſome Members of the Commons at *London*, a little before the Parliament met at *Oxford*, who were talking of ſome Diſturbance that might happen there, it was agreed, that in every County where the Parliament had the beſt Intereſt, a Member ſhould be left to manage the People.

That the Priſoner gave him the intercepted Letter to Sir *Roger L'Eſtrange*, and told him, he was the Author of it; (which, Mr. Attorney obſerved, was the Libel out of which *Fitzharris* took great Part of his:) That he received another Libel of the Priſoner, with Pictures in it, where all the Biſhops were changing their Hats for Cardinals Caps. It

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was entitled, *The Raree-Show.* This *Dugdale* produced in Court, and depoſed, he heard *Colledge* ſing it at *Oxford*, and at Lord *Lovelace*'s in the Country; where Sir *Robert Clayton*, Sir *Thomas Player*, and Mr. *Rouſe* were in Company.

Here the Chief Juſtice obſerved, that Lord Lovelace *was in Court*; but his Lordſhip did not think fit to contradict the Witneſs.

Then Mr. Attorney demanded, how *Colledge* deſcribed the Cut to him? *Dugdale* anſwered, the Figure with the Pack was the King, and the Pack were the Parliament, and all the King's Retinue; and then, there was the King in the Mire again: Mr. Serjeant *Jefferies* obſerved, that one Part of the Cut repreſented the Biſhops, whom they thruſt into the Pack, when they had got him down in the Mire; and then they hooted them all the Way, as it is in the Song.

The Chief Juſtice demanded, if *Colledge* explained it thus? *Dugdale* anſwered, Yes, he did, at *London:* Theſe were the King and the Clergy; and by *Louſe-Hall* was meant *White-Hall*, becauſe of its Poverty.

Here the Clerk of the Crown read the Ballad, [Raree-Show, &c.] *to the Tune of,* I am a Senſeleſs Thing-------

Mr. Serjeant *Jefferies* demanded, what *Colledge* meant by the two Faces? *Dugdale* anſwered, that the King was half Proteſtant, and half Papiſt.

And when he found the King would not yield to the Demands of the Commons, at *Oxford*, he ſaid, Let him begin as ſoon as he would, he did not care; for their Party (meaning the King and his Party) was but a Handful to him and his Party, who were the true Proteſtants; the other were but Proteſtants in Maſquerade: He hoped the Deponent would be true to his Side, and deſired, he would get Arms for himſelf; for the King had a Deſign to introduce Popery and Arbitrary Power: He expected they would begin; the ſooner the better.

The Priſoner told him, at *London*, that Captain *Brown*, (who had been an Officer in the Rebels Army) and the other Gentlemen, intended to come down: And he told him, at *Oxford*, that Captain *Brown*, and about forty more were come down; and the Deponent was with Captain *Brown*, Don *Lewis*, and ſeveral others of that Gang, at *Oxford.*

Here *Colledge* obſerved, that *Dugdale* ſwore before Sir *Leoline Jenkins*, that theſe Words were ſpoken at *London*; but the Grand Jury there were ſo wiſe and honeſt, that they would not find the Bill; and, the Deſign againſt him failing there, they changed the Scene to *Oxford.* Then he demanded, where he ſaid the Words, *The King was a Papiſt, and deſigned Arbitrary Government? Dugdale* anſwered, He ſaid them at *Combes*'s Coffee-Houſe, in *Oxford*, when no Body was by; and at the *Angel-Inn*, there, when there were ſeveral; and there were many People by, when he ſpoke them at *London*; particularly, *Starkey*, *Boſom*, and *Baldwin*; and they all reproved him for it. The Priſoner then demanded, what Arms he had at *Oxford? Dugdale* anſwered, he had a Pair of Piſtols before him, and ſome Pocket-Piſtols: *Colledge* replied, he did not deny he had a Pair of Piſtols in his Holſters; but he had no more than one Pocket-Piſtol, which he borrowed of *Dugdale.* Mr. Serjent *Jeffries* thereupon obſerved, that Chiſſels had been more proper Tools for a Joyner, than Piſtols.

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Dugdale depoſed farther, That *Colledge* told him, Captain *Brown* had a good Allowance; and he would ſpeak, that he might have a better; for he was able to do good Service, when the Time came.

Colledge demanded, from whom was that Allowance? *Dugdale* anſwered, there were ſeveral Gatherings among them, that he was privy to; but they did not tell him how the Money was diſtributed: And Mr. Attorney obſerved, that the Priſoner confeſſed, at his Examination, he gave a Guinea; which *Colledge* did not deny.

Dugdale depoſed alſo, That the Priſoner ſhewed him another Libel, which he produced in Court, with Cuts, that was entitled, *The Character of a Popiſh Succeſſor*, &c. and, in explaining it, he pointed at a Parcel of *Tantivy-Men* riding to *Rome*, and the Duke of *York*, half Man, half Devil, trumpeting before them: That in one Place of the *Raree-Show*, it was in the Manuſcript, *Now, now, the Rogue is down*; but Serjeant *Jeffries* obſerved, it was in the Print, *Now, now, the Giant is down.* The Priſoner then demanded, If the Song, he ſung at Lord *Lovelace*'s, was the ſame as that in the *Raree-Show? Dugdale* anſwered, Generally it was: He ſung it half a dozen Times, and the Muſick played to him. *Colledge* demanded, If any Body was by at the explaining the Pictures? *Dugdale* anſwered, Yes, Mr. *Baldwin*; and reproved him for being ſo open.

Mr. Attorney demanded, If *Colledge* did not endeavour to ſupport his Credit at Lord *Stafford*'s Trial?

The Priſoner anſwered, He acknowledged, he was examined there upon Oath; but what he ſaid was by Hear-ſay; he knew nothing of him of his own Knowledge; but he believed him another Man than he found him.

Mr. *Stevens*, the Meſſenger, depoſed, That ſearching the Priſoner's Houſe, by Order of Council, with Mr. *Atterbury*, they found the Original of the *Raree-Show* in his Bed-Chamber, and alſo thoſe that were printed.

Atterbury depoſed, They found the Original, drawn with a Pencil on *Dutch* Paper, on a Table in *Colledge*'s Chamber.

Sewell depoſed, they found the Papers, produced in Court, in a Bag, in the Poſſeſſion of *Colledge*'s Wife.

Smith's Evidence.

Mr. *John Smith*, (another of the Witneſſes againſt the Lord *Stafford*) depoſed at this Trial, That going with *Colledge* to dine at Alderman *Wilcox*'s, *Colledge* told him, that *Wilcox* was as true as Steel, and was a Man that would endeavour to root out Popery: And the Deponent anſwering, That may eaſily be done, if the King could be prevailed upon to paſs the Bill againſt the Duke of *York: Colledge* replied, No, You are miſtaken; *Rowley* (the King) is

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as great a Papiſt as the Duke of *York*, and every way as dangerous to the Proteſtant Intereſt; as is too apparent, by his arbitrary Ruling: That the Alderman not being come home, the Deponent asked *Colledge*, what kind of Man he was? Who anſwered, He was one that lived at his Country-Houſe, and gave freely to ſeveral People, to buy Arms and Ammunition, in order to bring the King to Submiſſion to his People: And he wondered *Old Rowley* did not conſider, how eaſily his Father's Head came to the Block; which, he doubted not, would be the End of *Rowley* at laſt: That *Colledge* afterwards ſhewed him his Arms, his Piſtols, Blunderbuſs, Great Sword, and his Armour, Back, Breaſt, and Head-piece, and ſaid, theſe were the Things that would deſtroy *Rowley*'s pitiful Guards, which were kept up, contrary to Law and Juſtice, to ſet up Popery and Arbitrary Power: That a little before the Parliament met at *Oxford*, *Colledge* and the Deponent fell into Diſcourſe, concerning the Preparations the City were making; and how they were provided with Powder and Bullets; and *Colledge* ſaid, for his Part, he would go down to *Oxford*; for he expected a little Sport there, upon the Diviſions that were like to be between the King and Parliament: Adding, *We expect the King will ſeize on ſome of the Members; and we are as ready as he: And, for my Part, I will be there, and be one that ſhall ſeize him, if he ſecure any Members.*

That after *Colledge* returned from *Oxford*, he told the Deponent, he went down in Expectation of ſome Sport; but *Old Rowley* was afraid, like his Grandfather *Jamy*, and ſo ran away, like to beſhit himſelf. He ſaid alſo, he had a Quarrel with *Fitzgerald* at the Door of the Houſe of Lords, at *Oxford:* That *Fitzgerald* called him Rogue, and made his Noſe bleed; but before long, he hoped to ſee a great deal more Blood ſhed for the Cauſe. And when there was a Diſcourſe of Lord *Feverſham*'s diſarming the City, *Colledge* ſaid, he was well provided; and if *Feverſham*, or any Man, nay, if *Rowley* himſelf, ſhould attempt any ſuch Thing, he would be the Death of him, before any Man ſhould ſeize his Arms.

That he deſired the Deponent would get Arms; he did not know how ſoon he might make uſe of them, he ſaid; and the Deponent had Armour from him; but it being too big, he returned it, and bought new.

That the Priſoner alſo ſaid, the Parliament had agreed to ſecure the King; and in order to it, the Parliament-Men were to come down with their Servants armed. *Colledge* demanding what Religion he was of? *Smith* anſwered, He was a Proteſtant, and in Orders: *Colledge* replied, He was a Prieſt, and had his Orders from the Church of *Rome*.

Mr. Attorney demanded, if he was not a Witneſs at Lord *Stafford*'s Trial? *Smith* anſwered, he gave a general Account of the Deſign of the Papiſts; and his Reputation was not then queſtioned. *Colledge* replied, He was the falſeſt Man that ever ſpoke with a Tongue.

Haynes's Evidence.

Bryan Haynes depoſed, that there being a Warrant out againſt him, he came to adviſe with *Colledge*, the Priſoner, about it; and he told him, The Parliament would ſit at *Oxford* ſoon, and he need not value the King of a Pin, for the King was in a worſe Condition than he (the Deponent;) and he ſhould ſee him called to an Account for his Actions: That the World ſaw he reſolved to bring in Arbitary Power and Popery; and, unleſs he let the Parliament ſit at *Oxford*, they would ſeize him there, and bring him to the Block, as they did the Logger-head his Father: The Parliament ſhould ſit at *Guild-Hall*, and redreſs the Subjects Grievances; and they ſhould ſee, that no King of his Race, ſhould ever reign in *England* after him.

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And demanding of *Colledge*, How this was poſſible, though the Duke of *Monmouth* was a fine Prince, and ſtood up for the Proteſtant Religion; *Colledge* anſwered, They made but an Idol of him, to recover their real Deſigns: Did he ever think, the wiſe People of *England*, would ever make a Baſtard upon Record, King of *England?* No; though they praiſed his Actions, they could not endure him, becauſe he was againſt his own Father: And *Colledge* added, Unleſs the King expelled from his Council, the Earl of *Clarendon*, cunning *Lory Hyde* and the Earl of *Halifax*, that great Turn-coat Rogue, who was once ſo much againſt Papiſts, they would make *England* too hot for him.

Colledge obſerving, It was impoſſible he ſhould ſay theſe Things, to a Man he had ſcarce any Acquaintance with; *Haynes* anſwered, *Colledge* knew his Principles, and his Circumſtances; he was at this Time, as much for Treaſon and Villany, as the Priſoner was: And when he objected there were no Preparations equal to ſuch a Deſign, and that Gentlemen would hardly quit their Eaſe for a Civil War; *Colledge* replied, You are miſtaken; we have 1500 Barrels of Powder, and 100,000 Men, ready at an Hour's Warning; we have prepared every Thing, againſt the ſitting of the Parliament at *Oxford*, and you ſhall ſee *England* the moſt glorious Nation in the World, when we have cut off that beaſtly Fellow *Rowley*; he came of a Race of Buggerers, for his Grandfather, King *James*, buggered the old Duke of *Buckingham:* Then he railed at Judge *Pemberton*, and ſaid, Let him try *Fitzharris* if he durſt; he ſhould ſee him go to *Tyburn* for it, he hoped, a Turn-coat Rogue.

Turberville's Evidence.

That at another Time, *Colledge* put the Deponent upon charging the King with firing the City, and murdering *Godfrey*; and ſpeaking of the Libel *Fitzharris* was condemned for, ſaid, The Devil take me, every individual Word is as true as God is in Heaven; and if you do not join with *Fitzharris*, and charge the King home, you are a baſe Fellow, for he makes you Slaves and Beggars; and it is Charity to charge him home, that we may be rid of ſuch a Tyrant.

That *Colledge* gave him, and others of the Party, blue Ribbons, to diſtinguiſh them, and ſhew that they were Proteſtants, and not Biſhop's Men; which they were to wear when the King was ſeized.

That

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That when *Colledge* returned from *Oxford* the Deponent told him, The King had made a Fool of them; and he anſwered, They had not done with him yet; that no Body ſuſpected he would have diſſolved the Parliament that Day, as he did; he took Coach, and went away, before the Parliament could get down, otherwiſe they ſhould have been too hard for him; for there was not a Parliament-Man, but had ſeveral armed Men to wait on him, and he himſelf had a Blunderbuſs, and a Man to wait on him: And, upon cloſing his Evidence, *Haynes* produced the Ribbon *College* gave him, as a Mark of Diſtinction, to know their Party by.

Turbervile's *Evidence.*

Then *Turbervile* (who had alſo been a Witneſs againſt Lord *Stafford*,) was ſworn, and depoſed, That when the Parliament ſat at *Oxford*, he dined with *Colledge*, Captain *Brown*, and Don *Lewis*, at the *Chequer*-Inn there; and that after Dinner, Don *Lewis* being gone out, and *Brown* aſleep on the Bed, *Colledge* and the Deponent fell to diſcourſing of the Times; and the Deponent ſaying, he thought it would not be a long-lived Parliament, *Colledge* anſwered, there was no Good to be expected from the King; he and all his Family were Papiſts, and had ever been ſuch: To which the Deponent replying, Perhaps the King would ſurprize the Parliament, or uſe ſome Stratagem to bring them to his Terms; *Colledge* ſaid, he wiſhed he would begin; but if he did not, they would ſecure him, till he came to their Terms; for there were ſeveral brave Fellows about Town, and many more were coming, that would join them: That he had got a pair of Piſtols, and a very good Sword; and the Deponent believed he had Armour on, but he could not be poſitive. Mr. Attorney demanding, if *Colledge* told him he came down on purpoſe to ſeize the King, *Turbervile* anſwered, Yes; and gave them blue Ribbons, to put in their Hats to diſtinguiſh them, if there ſhould be any Diſturbance; and when the Deponent ſaid, He had never a Horſe, and nothing but a Caſe of Piſtols, *Colledge* bid him not trouble himſelf; he would get him an Horſe.

Colledge demanding, Why the Deponent did not inform againſt him ſooner; *Turbervile* anſwered, That *Dugdale* told him, The Grand Jury of *London* would not find the firſt Bill, which he wondered at; for every one that converſed with *Colledge*, might have been an Evidence againſt him, he was ſo laviſh of his Tongue, againſt the King and Government.

Then Mr. *Maſters* was ſworn, who depoſed, He had been acquainted with *Colledge* many Years, and often reproved him for being ſo violent; but a little before the Parliament met at *Oxford*, they were diſcourſing of the Government, and he juſtified the Actions of the long Parliament in 1640; and the Deponent asking him, how he could have the Impudence to juſtify their Proceedings, who raiſed that Rebellion againſt the King, and cut off his Head; *Colledge* anſwered, they did nothing, but what they had juſt cauſe for and the laſt Parliament that ſat at *Weſtminſter* was of the ſame Opinion; and ſeeing him very buſy afterwards at *Guild-Hall*, when a Common-Council was held there, the 13th of *May*, the Deponent ſaid to him, Colonel *College*, what do you make all this Buſtle for? To which he anſwered, Mock not; I may be a Colonel in a little Time.

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Sir *Wiliam Jennings* depoſed, He had only a Coffee-Houſe Acquaintance with the Priſoner, before he came to *Oxford*; but obſerving a great many People looking at a Picture, he crouded in among the reſt; and after the Croud was gone, *Colledge* took a Picture out of his Pocket, and ſaid, he would give him one, and there was written *Mac a Top* on it. *Here the Picture was produced in Court.*-----That at another Time, he ſaw *Colledge* bring a Parcel of Ribbons into a Coffee-Houſe, with the Words, *No Popery*, *No Slavery*, wrought twice in every Quarter of a Yard; and ſaw him ſell a Yard of it for two Shillings, to one, he took to be a Member of Parliament, who tied it upon his Sword.

That the Day the *Oxford* Parliament was diſſolved, *Colledge* came to the Deponent, and told him, He had been in a Quarrel; Mr. *Fitzgerald* had ſpit in his Face, and he ſpit in his Face again, and ſo they went to Loggerheads; and the Deponent telling him, his Noſe bled, he anſwered, *He had loſt the firſt Blood in the Cauſe; but it would not be long, before more was loſt:* And he obſerved he never met the Priſoner, but he had been in ſome Quarrel.

Here *Colledge* deſired Sir *William* to recollect himſelf, as to the above ſaid Words: He ſaid, He acknowledged, he had been vindicating the Commons, and Dr. *Oates*, whom *Fitzgerald* had abuſed, and upon that the Quarrel began; and meeting Sir *William*, who told him, his Noſe bled; he ſaid, *He had loſt the firſt for the Parliament, and he wiſhed it might be the laſt:* Sir *William* replied, That to the beſt of his Memory, the Words were as he firſt related them, and nothing of the Parliament mentioned.

Colledge's *Defence,*

Then the Chief Juſtice telling *Colledge* he might enter upon his Defence, he deſired to know, if there had been any Conſpiracy proved againſt him; or any thing, but Words.

The Chief Juſtice anſwered, If the Witneſſes ſpoke true, there was plain Proof of a Conſpiracy: As his making, and publiſhing Libels and Pictures, to render the King odious and contemptible to the People: His preparing Arms, and ſhewing of them; declaring at the ſame time, He would go down to *Oxford*, and if there ſhould be a Diſturbance, he would ſecure the King: And he did come to *Oxford* accordingly, and behaved himſelf there, in the Manner *Dugdale* and *Turbervile* had atteſted; which was a ſtrong Evidence againſt him. And he informed the Priſoner, than an endeavour to ſeize the King's Perſon, had been always held to be Treaſon, by 25 *Edw.* III: *For King's were never made Priſoners, but in order to their Death.* That the Statute of the 13th of this King, was ſtill ſtronger againſt him; which ſays, If a Man ſhall by any Words, or malicious ſpeaking,

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ſhew the Imagination of his Heart, that he hath ſuch an Intention, That was Treaſon.

The Priſoner demanded, If there ought not to be two Witneſſes to the ſame Words?

The Chief Juſtice anſwered, If there was one Witneſs to prove one Fact, and another to another Fact, being an Evidence of the ſame Treaſon, they were two Witneſſes ſufficient, to ſupport the Indictment, as was held in Lord *Stafford*'s Caſe; and, if one Witneſs proved what was ſaid at *Oxford*, and another proved what was ſaid at *London*, if they related to the ſame Treaſon, it was ſufficient: But in his Caſe, there were two Witneſſes, beſides Sir *William Jennings*, who ſpoke fully to the Facts at *Oxford*.

Colledge then proceeded in his Defence, and ſaid, He ſhould prove this to be a moſt helliſh Conſpiracy, to deſtroy all the Proteſtants in *England*, that had the Courage to oppoſe the Popiſh Plot, in which he had ſignalized himſelf: It was highly improbable, he ſhould talk ſuch Things with Papiſts, Prieſts, and *Iriſhmen*, who had broke their Faith with their own Party, and been concerned in Plots and Treaſons, to cut the Throats of Proteſtants: He confeſſed, he did hear there was a Deſign of deſtroying the Parliament at *Oxford*, and all Proteſtants; *and he was reſolved, if he lived, to come along with the Parliament, and if there was any ſuch Deſign, to live and die with them*; but his Arms were only a Sword, and a Caſe of Piſtols: That before the laſt Parliament at *Weſtminſter*, he began to be popular, and called, *The Proteſtant Joyner*; and the Duke of *Monmouth*, and ſome other Lords, employed him to ſearch under the Parliament-Houſe, that there might be no Tricks played them by the Papiſts; and the Lord *Lovelace* went with him, and ſome of the Houſe of Commons, to ſearch; and he received their Thanks: That there was not only an Oath made, of a Deſign to deſtroy the Parliament at *Oxford*, but it was the general Belief, ſome Evil was intended them; and People generally armed themſelves with Sword and Piſtol, leſt they ſhould be attacked by the Papiſts; and he came down, two Days after the Parliament ſat, with the Lords *Howard*, *Clare*, *Huntingdon*, and *Paget*; and went to Town again with the Lord *Lovelace*, Sir *Thomas Player*, and Sir *Robert Clayton*, who were in great Fear, that *London* would be ſurprized by the Papiſts; but no one ever heard of ſeizing the King, till theſe Witneſſes came, and atteſted it; and it was a moſt wicked Falſhood: He knew of no Man that would have ſtood by him in ſuch a Deſign; and it could not be ſuppoſed, he ſhould have made ſuch an Attempt alone: He declared he never knew of any Deſign againſt the Government, or ſpoke one of the treaſonable Words he was charged with: This, indeed, was not the firſt Time the Papiſts had a Deſign againſt his Life; but this was the firſt Time they went about to take it away by Law.

The Chief Juſtice ſaid, He did not know there was one Papiſt, a Witneſs againſt him.

Colledge anſwered, Every Man of them had been Papiſts, except Sir *William Jennings*: Mr. Attorney demanded, If Mr. *Maſters* was? *Colledge* ſaid, He only teſtified ſome merry Diſcourſe: The Court demanded, If he made merry with the blackeſt Tragedy, the horrid Rebellion, and Murder of the King?

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Then *Colledge* called his Witneſſes, and ſome of them depoſed, That the Witneſſes againſt the Priſoner had ſaid, they were tampered with, to throw the Plot on the Proteſtant Diſſenters; but his Principal Witneſs was *Oates*, who had ſomething to teſtify againſt every one of the King's Witneſſes, particularly, That *Turbervile* told him, He had nothing to ſay againſt *Colledge*; but meeting him afterwards at *Oxford*, he ſaid, He had; for the Proteſtant Citizens had deſerted them, and *God damn him he would not ſtarve*.

Oates's Evidence for Colledge.

To this *Turbervile* anſwered, That he did meet *Oates* indeed, who invited him to come over to his old Friends, and told him, he ſhould be received with abundance of Kindneſs; but abſolutely denied he ever ſaid any thing to him about his Evidence; for he always looked upon *Oates* as an ill Man, and never converſed much with him.

Oates depoſed further, That ſome provoking Language, having paſſed between *Smith* and *Colledge* at a Coffee-Houſe, *Smith* ſaid, *God damn him he would have his Blood*; and when *Oates* ſaid, Theſe Words did not become a Miniſter of the Goſpel, *Smith* replied, *God damn the Goſpel*.

He alſo depoſed, That converſing with *Dudgdale*, he ſaid, there was great Talk of his being an Evidence againſt Lord *Shaftesbury* and other Proteſtants; but he took God to Witneſs, he knew nothing againſt any Proteſtant in *England*: And *Oates* telling him, he doubted he had gone againſt his Conſcience, *Dugdale* replied, It was all along of Colonel *Warcup*; for he could get no Money elſe. Whereupon Mr. Attorney obſerved, That *Oates* was a thorough-paced Witneſs, againſt all the King's Evidence; and Serjeant *Jefferies* took notice, that *Oates* had ſtood alone, in ſome Matters, if it had not been for theſe Witneſſes.

Oates proceeded in his Evidence, and ſaid, That *Dugdale* had an old Clap, and gave out he was poiſoned; and this Sham paſſed through the Kingdom in the weekly Papers; but he could make it appear, by the Phyſician that cured him. (*And ſo ſaid Biſhop* Burnet, *it ſeems.*)

Dugdale however denied it, upon his Salvation; and ſaid, if any one would come and ſay, he cured him of a Clap, he would own himſelf guilty of what was imputed to him.

Mr. Attorney obſerved again, That it was very unhappy, that *Oates* ſhould come in againſt theſe Men, who ſupported his Evidence at other Trials.

The Chief Juſtice ſaid, It was improbable that theſe three Men ſhould come to *Oates*, and own themſelves Rogues and Villains; and obſerved, That all Three of them denied upon their Oaths, what this one Man affirmed on his bare Word.

Then a Witneſs for *Colledge* depoſed, That he had known him three Years, and he uſually rode with a Brace of Piſtols before him: He had borrowed his Horſe and his Piſtols ſeveral Times, and ſeen a ſuit of Silk Armour of his, which

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which he ſaid, he provided againſt the Papiſts; for he expected a Bruſh with them.

Colledge alſo proteſted, They were only intended againſt the Papiſts; and truly, by the Grace of God, he ſaid, He ſhould not have been the laſt Man againſt them; but he perceived, whatever was provided for that Purpoſe, was believed to be provided againſt the King and Government: But he hoped the Jury would obſerve, there were no new Arms provided; only thoſe he had a great while ago.

Then *Bolron* and *Mowbray* depoſed, That *Smith* would have ſuborned them to ſwear a Proteſtant Plot; and *Colledge* obſerved thereupon, That there was a Deſign of the Papiſts, to turn the Plot upon the Proteſtants: That they had begun with him; and, if they had his Blood, who might feel the Effects of it next, he could not tell.

The Priſoner calling ſome Witneſſes to his Reputation, they ſaid, He was a Native of *Watford* in *Hertfordſhire*; and that about eighteen Years before, he lived at that Town, and uſed to go to Church, and had a good Character there, and at *Black-friars*, in *London*, where he lived when he was taken up.

Peter Norreys depoſed, That he was at the *Hercules' Pillars*, in *London*, with Sir *William Waller*, *Macnamarra*, Mr. *Lewis*, and Mr. *Smith*; and ſpeaking of the Parliament to be held at *Oxford*, Sir *William Waller* ſaid, Moſt Parliament-Men were afraid to go to the Parliament; and Mr. *Smith* replied, He hoped they would be provided to go, if they did go: Whereupon Sir *William Waller* ſaid, He and his Friends ſhould be provided; and *Colledge* anſwered, He would be provided too, and would go with them.

Then *Colledge* ſaid, As to the Pictures and Papers he was charged with, he knew nothing of them, nor ever drew a Picture in his Life; and called his Servant, *Elizabeth Hunt*, to prove how the Paper called, *The Raree-Show*, came to his Houſe.

Elizabeth Hunt depoſed, That a Porter brought three Bundles of Papers to her Maſter's, when he was abroad, and ſhe paid the Porter Six-pence for bringing them; and they were in the Houſe ſeven or eight Weeks before they were ſeized by the Meſſengers. She depoſed further, That being ſent to Mr. *Dugdale* for ſome Money he borrowed of her Maſter, ſhe told *Dugdale*, ſhe thought it was hard he ſhould keep her Maſter's Money, and ſwear againſt his Life too. And *Dugdale* anſwered, there was a great deal to do about his ſwearing againſt her Maſter; but, as he hoped for Salvation, he did not believe Mr. *Colledge* had any more hand in the Conſpiracy againſt his Majeſty, than the Child unborn.

Dugdale appearing again, anſwered, He could not ſay he had nothing againſt her Maſter: She asked him to write down what he had ſaid; but he told her, He knew not what was Treaſon; That muſt be referred to the Court.

Then Mr. *Colledge* made his Obſervations on the Evidence, and ſaid, My Lord, I have nothing but Innocence to plead; no Flouriſhes to ſet off my Defence: I cannot take the Jury or the Court with Oratory: But I declare in the Preſence of God Almighty, That what is ſworn againſt me, concerning providing Arms, or a Deſign to ſeize his Majeſty, or to rebel againſt the eſtabliſhed Government, is all a Fiction; I never had ſuch a Thought: It is true, they have ſworn againſt me deſperately; but I think it appears, they have contradicted one another: It has been proved, this was a Deſign; and that they have been tampered withal: That they complained of their Poverty, and wanted a Maintenance; and confeſſed they were tempted to come over, and ſwear againſt Proteſtants, and they have begun with me; but I hope the Jury obſerve, I have ſufficiently contradicted their Evidence: Is it poſſible to imagine, if I had a Grain of Senſe, that I ſhould diſcover my ſelf to ſuch a one as *Haynes*, an *Iriſhman*, and ſpeak all that Treaſon, he has galloped through, the firſt Time I ſaw him? Every Witneſs, I think, has been confuted by Men of Principles, Perſons of Integrity and Honeſty; (though moſt of them were unknown to me,) and who have offered their Teſtimony voluntarily. There is no Probability they ſhould come and atteſt a Falſhood for me, who am a Stranger to them, for nothing. My Lord, I am a Proteſtant, and have been a Lover of the Church of *England*, and profeſs the ſame Faith; and *never had a Prejudice againſt any Churchman, but ſuch as promote the Intereſt of the Papiſts; for ſuch there are among them.* I confeſs, I have heard ſome Diſſenters, and have found them honeſt, juſt, and pious, free from Oaths and Debauchery, and unlike ſome, who call themſelves of the Church of *England*; and lead ſuch Lives, that no Credit can be gained to the Church by them. My Lord, I have been a hearty Man againſt the Papiſts, and for the Parliament, and am ſorry any Man ſhould create Miſunderſtandings between the King and Parliament: I always thought I ſerved my King, when I ſerved the Parliament; I had the Honour to be entruſted by them, and upon that Account, I came voluntarily down hither, at my own Expence; and ever ſince the Diſcovery of the Plot, have done my utmoſt to come at the Bottom of it; and have encouraged thoſe that diſcovered theſe Villanies, againſt the Life of the King, and againſt our Religion and Government: And, *Theſe Men who ſwear againſt me, are thoſe that uſed to follow me for Bread: They uſed to ſay, they thought it hard, when they came to ſave our Lives, we ſhould let them want Bread; and I have collected Money for them; and ſometimes they thought fit to petition the Common-Council for Relief; and pretended to me, they would make further Diſcoveries of the Popiſh Plot.*

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Colledge's *further Defence, and Obſervations on the Evidence.*

The firſt Time I ſaw *Haynes*, was upon ſuch an Account, in *March* laſt: He ſaid, He would diſcover a Piece of Roguery, againſt Lord *Shaftesbury*'s Life; and I went with him and Captain *Brown*, from *Richard*'s Coffee-Houſe to the *Hercules' Pillars*; where he told us of the Deſign to deſtroy the Parliament at *Oxford*, and of an Army that was to land in the

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the North, and another in *Ireland*, and the Duke of *York* was to head them. At another Time, *Haynes* came to me, under Pretence of diſcovering the whole Deſign, concerning *Godfrey*'s Murder; and ſaid, If Lord *Shaftesbury* would engage to get his Pardon, he would diſcover the whole Truth. When I acquainted Lord *Shaftesbury* with it, ſays he, Theſe *Iriſhmen* have confounded all our Buſineſs: Thou and I muſt have a Care, they do not put a Trick upon us: This may be a Trick of the Papiſts to ruin us. Afterwards they brought Mrs. *Fitzharris* to my Houſe, to confirm what they had told me; and *Haynes* ſaid in my Yard, that he ſaw Lord *Danby* come to the Chappel of *Somerſet-Houſe*, when *Godfrey*'s Body lay under the Altar.

Here the Court told him, He rambled from the Matter, and told long Stories, of what there was not a Jot proved, and was not at all pertinent.

Colledge anſwered, He thought it was to the Point, when that Man pretended a Familiarity with him, to ſhew how their Acquaintance began.

The Court bid him apply himſelf to ſum up the Evidence, and anſwer what had been proved againſt him; but ſaid, He muſt not be allowed to tell Stories, to amuſe the Jury, that were not proved.

Colledge ſaid, He did not know why his Oath, being an *Engliſhman* and a Proteſtant, ſhould not be taken, as well as his, that was an *Iriſhman* and a Papiſt.

The Chief Juſtice anſwered, He went upon a wrong Ground; that his Word was to be taken, but no Juſtice could be had againſt Malefactors, if their Words were to go for Proof of their Innocence.

Colledge demanded, How *Dugdale* knew, that by the Word *Rowley* he meant the King?

Whereupon *Dugdale* ſtood up again, and ſaid, That the firſt Time he heard what *Rowley* meant, was from the Priſoner, who told him, *Rowley* was the King, and *Mac* the Duke of *York*.

Colledge asked, upon what Picture it was he explained *Rowley* to him? *Dugdale* anſwered, He had ſo many Pictures he could not remember; he received Pictures from him at *Richard*'s Coffee-Houſe, and at the *Green-Dragon* he thruſt one into his Pocket. *Colledge* demanding, What Picture it was he gave him then? *Dugdale* anſwered, He ſuppoſed, it was one about the Biſhops, where he made Biſhop *Mew* kiſſing the Pope's Toe; and told him, That was Biſhop *Mew* that had the Patch on.

Colledge denying he made the Libel, *Dugdale* avered, he told him, he was the Author of it.

His Defence continued.

Colledge then proceeded in his Defence; and ſaid, He denied he had that Diſcourſe with *Smith*, that he teſtified: And, as for his being in Company with Captain *Brown* and Don *Lewis*, they were Friends of the Lord *Howard*'s, with whom he came down to *Oxford*, and they lay at the *Chequer* where he did; and it had not been ſhewn they were in a Conſpiracy.

The Court anſwered, He told the Witneſs at *London* they were ſuch Perſons. *Colledge* replied, he was not acquainted with either of them, a Fortnight before he came down: However, he deſired the Opinion of the Court, whether what was done at *London*, could maintain an Indictment at *Oxford*?

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The Chief Juſtice anſwered, That what he ſaid in *London*, was Evidence to maintain the Indictment at *Oxford*, and proved what his Intention was in coming down.

Colledge ſtill inſiſted, That what was done at *Oxford*, was ſupported only by a ſingle Teſtimony. The Court anſwered, That *Dugdale* and *Turbervile* both ſwore the ſame Thing; namely, That they had a Deſign to ſeize the King at *Oxford*: But if it was neceſſary, the ſame Thing ſhould be proved to be ſaid at the ſame Time, before two Witneſſes, the King would be very unſafe; for a Conſpirator would take Care, not to ſay the ſame Thing, before two Witneſſes, at the ſame time.

Colledge replied, If the King was not ſafe in that Caſe, no private Man could be ſafe the other Way; all Society and Converſation was at an End: However, he thought the Teſtimony of theſe Witneſſes was invalidated by ſubſtantial Perſons. He deſired the Jury would do him Right, as they would anſwer it at the great Day; and conſider, whether there had not been ſome Occaſion for talking of late; and, whether, a Slip of the Tongue ought to be conſtrued a malicious and adviſed Speaking: He expected a Storm of Thunder from the learned Counſel, he ſaid: He was unlearned, and muſt defend himſelf without any Counſel; and queſtioned, whether this was the Practice of any other Nation: It was hard, that he, an illiterate Man, ſhould ſtand there alone all Day, and they, being many, and learned in the Law, ſhould take all Advantages againſt him: He took God to Witneſs, he was innocent, and hoped the Jury would neither be frightned nor flattered, but act according to their Conſciences: They were Judges, both of Law and Fact, and might acquit or condemn him; but his Blood would be required at their Hands: Concluding with a Prayer, that God Almighty would direct them to do him Juſtice.

Mr. Solicitor's Reply to his Defence.

To this Defence Mr. Solicitor replied, That the Fact charged upon Mr. *Colledge* was, a Deſign to kill the King: The Manifeſtation of that Deſign was, his preparing Arms for that Purpoſe; and coming down to *Oxford* to ſeize the King.----*Then Mr. Solicitor having ſummed up the Evidence, proceeded, and ſaid:* As to that Objection of the Priſoner's, that he had his Arms long before; they were not provided for this Purpoſe; Gentlemen, we do not pretend to know when this traiterous Deſign began, and how long it has been hatching: But, whether he prepared them againſt the Time, or not, is not material; for, if he had them firſt innocently, if he afterwards deſigned them for ſuch a Purpoſe, and ſhewed them in a Readineſs for it, That is Evidence ſufficient to prove the Treaſon. And it is proved, he ſaid, *He came down in Expectation ſomething would be done; and came down accordingly*, in an Equipage not ſuitable to his Profeſſion, armed, on Horſeback, with

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a Brace of Piſtols; Things that did not become a Carpenter or Joyner to travel with.

Here *Colledge* interrupted the Solicitor, and deſired he might not be overborne; for that there was ſcarce a Carpenter, or Poulterer, in *London*, but had Piſtols when he rode out.

But the Court telling him, he muſt not interrupt the Counſel, Mr. Solicitor proceeded, and ſaid,

As *Colledge* came down with an Intent to ſeize the King, and expected, what he called, *ſome Sport*; ſo he did endeavour to begin the Sport, by that Quarrel in the Lobby of the Houſe of Lords with *Fitzgerald*; for, from little Matters ſometimes great Things ariſe: And when Men, (as he himſelf ſaid,) were *poſſeſſed with an Expectation, that the Parliament would be attacked*, a little Matter might have begun the Commotion; and what End it might have had, no Man knew. As to that Objection, that this was a Popiſh Deſign to throw the Plot upon the Proteſtants; the Witneſſes who proved this Treaſon, were the Witneſſes that proved the Popiſh Plot; and ſtill ſtood to that Evidence: They were Men the whole Nation had given Credit to. Upon the Credit of *Dugdale* and *Turbervile*, the Commons impeached the Lord *Stafford*; and after a moſt ſolemn Trial, where all the Objections that could poſſibly be made, were made, the Lord *Stafford* was found guilty by his Peers, and died upon the Credit of theſe Men: And the Priſoner muſt not pretend to blow all off with that frivolous Objection, that theſe Perſons were engaged in a Deſign to throw the Plot upon the Proteſtants: And what ſort of a Poteſtant he was, (though he would have it believed he was ſo popular as to have obtained the Name of *The Proteſtant Joiner* for his Zeal) his Actions beſt diſcovered. If the Proteſtant Religion allowed a Man to vilify the King, to arraign the Government, and throw of all manner of Allegiance; then was the Priſoner a Proteſtant: But if Papiſts could wiſh no greater Infamy to the Proteſtant Religion, than that its Diſciples ſhould juſtify the late horrid Rebellion, and ſuch Principles as this Man, in his many ſcurrilous Libels, ſeemed to do; and wiſhed nothing more than to ſee this Kingdom in Confuſion, and the Church of *England* deſtroyed; Mr. *Colledge*, while he was acting this Part, had no Pretence to call himſelf a Proteſtant.

As to *Oates*'s Teſtimony, who came to vilify the Credit of thoſe Men who ſupported his own Credit, by the Teſtimony they gave of the Popiſh Plot, that He ſhould urge theſe Calumnies, and take up thoſe very Arguments the Papiſts had maliciouſly made uſe off, and were never able to make out, looked as if the Doctor was returning to *St. Omers* again. Mr. Solicitor obſerved further, That the Priſoner, to prove himſelf a Proteſtant, had produced ſome Witneſſes to teſtify he went to Church ſixteen or eighteen Years ago; but he had not brought any of his Neighbours at *London*, to ſhew he went to Church there: But if he had ſhewn his Conformableneſs to the Church never ſo fully, yet, if he had been guilty of ſuch Practices, they muſt take leave to ſuſpect his Profeſſion; for they were ſuch as all good Men abhorred; and he could not but reflect upon his Condition, whoſe only Hopes were, that the Jury would now forget themſelves, and become as ill Men as he was: But, as that could not be preſumed, he ſhould only ſay, They were Men of that Conſideration, that they could judge between Things and the Appearances of them; and knew very well how to give the due Weight to the Evidence they had heard, as well as to the Objections that had been made by the Priſoner; and therefore left it to them.

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Mr. Serjeant Jeffries's *Obſervations.*

Mr. Serjeant *Jefferies*, in his Obſervations on the Evidence, ſaid, That notwithſtanding what the Priſoner had ſuggeſted to the contrary, the Judges were Judges of the Law, as the Jury were of the Fact: And the Judges had told them, where Treaſon was committed in ſeveral Counties, if their Teſtimony concerned the ſame Treaſon, it was ſufficient; as had been reſolved in the Caſe of *Gavan*, who was tried in *London*, and Evidence given of Facts both in *London* and the Country: And, he left it to their Conſciences, Whether, upon the bare Affirmation of Mr. *Oates*, they would convict three Men of Perjury, upon whoſe Teſtimony ſo many Lives had been taken away; and juſtly too, as Proteſtants believed: That they had not only the poſitive Teſtimony of thoſe three Men to encounter, but the higheſt Improbabilities: For, it could never be ſuppoſed, theſe Men ſhould all come voluntarily to Mr. *Oates*, and tell him, that they were forſworn, and ſuborned, to throw the Plot upon the Proteſtants, as *Colledge* would have them believe.

He hoped, the whole Proteſtant Intereſt was not involved in the Fortune of the Priſoner at the Bar: The Queſtion was not, Whether there was a Presbyterian, or Proteſtant Plot; (they declared they knew of none:) But the Queſtion was, whether the Priſoner at the Bar had ſpoken ſuch Words, and done ſuch Things, as were ſworn againſt him.

And though ſuch a Stir had been made about Popiſh Witneſſes, and *Iriſh* Witneſſes, there had been but one *Iriſh* Man, and not one Papiſt, examined in the Cauſe; but if there had God forbid, that the Country ſhould be any Objection to any Man's Teſtimony; or Truth confined to Places and Perſons.

The reſt of the Serjeant's Arguments, being much the ſame with thoſe of the Solicitors, are deſignedly omitted; it being intended to avoid Repetitions, as much as poſſible.

The Chief Juſtice's Directions to the Jury.

Then the Chief Juſtice directed the Jury, and told them, That the Charge againſt the Priſoner was, his compaſſing the Death of the King, and conſpiring to ſeize his Perſon; which was the ſame Thing in Effect: For, even by the Common Law, and upon the Interpretation of the Statute of 25 *Edw.* III. whoever ſhould imagine to depoſe the King or to impriſon him, was guilty of imagining the Death of the King; for, never was any King depoſed, or impriſoned, but with an Intention to be put to Death.

That, as to the Proof of this Treaſon, there had beed ſix Witneſſes: As to two of them,

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Sir *William Jennings* and Mr. *Maſters*, though they did not ſpeak directly to the Treaſon, yet their Teſtimony inferred a Probability of it: For Sir *Will. Jennings* telling him, he bled at the Noſe, after his Quarrel with *Fitzgerald*, the Priſoner ſaid, *He had loſt the firſt Blood, and it would not be long ere there would be more loſt:* Which ſhewed, there were ſome extraordinary Thoughts in his Heart, concerning ſome Quarrels and Fighting that he expected: And that which Mr. *Maſters* depoſed, concerned his juſtifying the Long Parliament; and, when he called him Colonel, ſaying, he might be a Colonel in Time, ſhewed there were ſome extraordinary Thoughts in his Heart.

Here *Colledge* demanded, if thoſe Words could not bear a more favourable Conſtruction?

The Chief Juſtice ſaid, He would have done well to have explained which way he expected to be a Colonel.

Colledge replied, He thought he had called him Couſin; and his Anſwer was, that Mocking was catching.

The Chief Juſtice proceeded, and ſaid, As to the other four Witneſſes, they were all of them very full, as to the Treaſon, if what they ſaid was true: And, he thought, the Queſtion would lie purely upon the Credit of theſe Witneſſes: And, as to *Dugdale* and *Turbervile*, who were the two moſt material Witneſſes of what was ſpoken and done in *Oxfordſhire*, he thought there was not any Thing material proved againſt them; and both they, and *Smith*, denied upon their Oaths, all that *Oates* had affirmed of them; and inſiſted ſtrongly on the Improbability, that theſe three Men, without any Inducement, ſhould come to *Oates*, and acknowledge themſelves perjured.

Colledge then deſired his Lordſhip to look in his Notes, and he would find much more Evidence againſt *Dugdale* and *Turbervile*, than he had repeated: But the Chief Juſtice ſaid, he could remember no more; he muſt refer it to the Memory of the Jury.

Then *Colledge* deſired, that Nobody might be with the Jury; and was anſwered, Nobody ſhould come near them, till they were agreed on their Verdict; and a Bailiff was ordered to keep them; but before they went out of Court, they were ordered two Bottles of Sack for their Refreſhment, in the Preſence of the Priſoner: And after half an Hour's Receſs, the Jury returned with their Verdict, that he was GUILTY. At which there was a great Shout; and one Perſon was committed for hollowing, but diſcharged next Morning on his Submiſſion.

He is convicted.

It being about three in the Morning when the Court broke up, it was adjourned till ten the ſame Morning, when *Aaron Smith*, *Colledge*'s Solicitor, was bound in a Recognizance of 500 *l.* to appear in the *King's-Bench* the next Term: After which, *Colledge* being asked, what he could ſay, why Judgment ſhould not paſs upon him, he ſtill made great Profeſſions of his Innocence.

The Chief Juſtice's Speech, before Sentence.

The Chief Juſtice anſwered, It was now too late to inſiſt upon his Innocence: But, becauſe he perſiſted in it, he thought it was neceſſary to ſay ſomething in Vindication of the Verdict. He obſerved, there were ſufficient Proofs to warrant it; and that the Jury had done juſtly: That, as the Priſoner had managed his Defence, a ſmall Proof would have ſerved to induce the Jury to believe him guilty: He thought it ſtrange, when he had called ſo many Witneſſes to his Religion and Reputation, that none of them gave an Account of his receiving the Sacrament for many Years; or had ſeen him at Church; or what kind of Proteſtant he was: If they obſerved his Words, indeed, they ſhewed, that he was mighty violent and zealous in crying out againſt Popery, and the Papiſts; but if they looked into his Actions, they promoted the Deſigns of the Papiſts. For the Papiſts were beſt extirpated, and ſuppreſſed, by a ſteady Execution of the Laws againſt them: Not by violent Outcries; by inflaming the People; by Tumults and Confuſions; for this was what the Papiſts drove at: They had no Hopes of creeping into the Kingdom any other way than by ſuch Confuſions; and after that Church ſhould be deſtroyed, which was, next under God, the beſt Bulwark againſt them.

Sentence paſſed on the Priſoner.

In his loud Outcries againſt Papiſts, it had been proved alſo, who he meant by Papiſts: He had the Boldneſs to ſay, *The King was a Papiſt, the Biſhops were Papiſts, and the Church of* England *Papiſts*; which ſhewed, what kind of Proteſtant he was; and, if they ſhould look into his Politicks, it was proved, by unexceptionable Witneſſes, that he juſtified the late horrid Rebellion, and the Conſequence of that was, the Murder of the beſt King in the World: *He that would juſtify the Proceedings of that Parliament, and affirm, they did nothing but what they had juſt Cauſe to do, would do the ſame Thing, in the ſame Circumſtances.*

His Speech at his Execution.

And how had he managed his Defence, as to that Part of the Charge, of his coming down armed to *Oxford* to ſeize the King? He expected he would have ſaid, he only wore thoſe Things for his own Defence, upon the Road, as a Gentleman travelling; or, that he went with his Friends, to accompany them out of Town, and defend them from Robberies; but to ſay, as he did in his Defence, *That he went to guard the Parliament*, he did not underſtand what he meant by it. He did not believe the Parliament ſent for a Guard, or intended to have a Guard: He did not believe, any of them in their Hearts thought they needed a Guard; for they ſaw, when the King diſmiſſed the two Houſes, on Account of their Differences, they all departed quietly; not a Man of them was diſturbed: And how it ſhould come into the Priſoner's Head, who was but a private Man, to go and guard the Parliament, he much wondered. *If all Men of his Condition, ſhould have gone down to guard the Parliament, what an Aſſembly had there been? What Confuſion might have happened on a ſudden?* He had urged indeed, that he was not a Man of Quality, nor was it likely, he ſhould be able to attack the King or his Guards; yet, if all of his Quality had gone upon the ſame Deſign, he did not know, what

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what might have been the Conſequence; for *Maſſaniello*, a mean Man in another Country, had effected ſtrange Things, as *Wat Tyler* and *Jack Straw* had in our own.

When he obſerved theſe Things therefore, (he ſaid) and conſidered the Complexion of his Defence, it made a ſlender Proof have Credit: And though there was full Proof in this Caſe; yet, if there had been a great deal leſs, the Jury might, with Juſtice, have found him guilty: And, becauſe the Priſoner yet declared himſelf innocent of all he was charged with, he thought himſelf bound to take notice, in Vindication of the Country, and of the Juſtice of the Court, That it was a Verdict well-given, and to the Satisfaction of all the Judges on the Bench. This he ſaid out of Charity, that the Priſoner might incline his Mind to a Submiſſion to the Juſtice that had overtaken him, be in Charity with all Men, and prepare himſelf for another Life.

Sentence paſſed on the Priſoner.

Then the Chief Juſtice pronounced the uſual Sentence in High-Treaſon; and he was drawn to the Place of Execution, before the Gate of the Caſtle at *Oxford*, on *Wedneſday* the 31ſt of *Auguſt*, 1681; where he made a very long Speech to the People: In which, he told them, He was *a Proteſtant of the Church of* England, *according to the beſt Reformation of it, from all Idolatry and Superſtition*, or any thing that was contrary to the Goſpel of our Bleſſed Saviour.

His Speech at his Execution.

As to what he died for, he ſaid, He was never in any Plot, or knew of any but the Popiſh Plot; nor had he any Deſign to have ſeized his Majeſty, either at *London* or *Oxford*, as had been ſworn againſt him; neither did he know any one Man, that would have ſtood by him, in ſuch an Attempt: He complained, he had been cloſe confined in the *Tower*, no one ſuffered to come at him, (though the Popiſh Lords had that Favour ſhewn them); and thus was rendered incapable of making a proper Defence.

He took God to witneſs, he had ſought him ſeveral Times with Tears, to inform him, if he had tranſgreſſed at any Time, but in Word; declaring, That he had never heard of the Things ſworn againſt him, till he heard them from the Witneſſes Mouths at the Bar.

Then he took great Pains, to convince the World he was no Papiſt in Diſguiſe, as ſome had ſuggeſted; and ſaid, That *Haynes* the Witneſs, and ſome other *Iriſhmen*, did diſcover to him, *That the Parliament was to be deſtroyed at* Oxford; *and*, *That there was a Deſign to murder the Lord* Shaftesbury, *by* Fitzgerald *and his Party:* He wiſhed the Commons of *England* as well as he wiſhed his own Heart; and he did not underſtand but, when he ſerved the Parliament, he ſerved his Majeſty too; and let them be miſerable, that made the Difference between them; for his Part, he never did: He came to *Oxford* with Lord *Howard*, whom he looked upon to be a very honeſt worthy Gentleman, with Lord *Clare*, Lord *Paget*, and Lord *Huntingdon*; and Captain *Brown* and Don *Lewis* were in their Company, being Lord *Howard*'s Friends.

He took God to witneſs, he never had the Value of Six-pence to carry on any Deſign; *nor could he charge any Man living with a Deſign againſt the Government, his Majeſty, or any other Perſon.* 1681. 33 Car. II.

As to what Arms he and others had, they were for their own Defence, in caſe the Papiſts ſhould attempt a Maſſacre, or any Invaſion, or Rebellion. If this was a Plot, he was in one; but in no other; nor did he ever know of any Numbers, or Times, appointed for meeting; but they ſaid one to another, that the Papiſts had a Deſign againſt the Proteſtants, when they did meet, and in caſe they did riſe, they were ready: *This was his Buſineſs, and this was the Buſineſs of every good Subject, that loved the Laws of his Country and his King.*

The Sheriff demanding, What he meant by being of the beſt reformed Church in the World, the Church of *England?* and, Whether he died a Presbyterian, an Independant, or a Church man? He anſwered, He was under a Presbyterian Miniſtry for twenty Years; namely, till the Reſtoration, and then he conformed; but afterwards ſeeing the Diſſenters hardly uſed, he went over to them again; However, he ſometimes went to Church.

The Priſoner having concluded his Speech and his Prayers, forgiven his Enemies, and eſpecially the Witneſſes, was executed according to the Sentence.

Remarks on Colledge's *Trial.*

The ſeizing a Priſoner's Papers, and denying him Counſel, I always held to be very great Hardſhips, very great Injuſtice: But it ſeems, all that were neceſſary for his Defence were returned, or put into a third Hand, by the Direction of the Court, that he might have the Benefit of them at his Trial; only a Speech that had been drawn up for him, and repleniſhed with Sedition and Slander, was ſuppreſſed.

The Law, indeed, did not allow him the Advice of Counſel, either oral or written; and yet, it ſeems, the Court indulged him the Uſe of thoſe Papers, which directed him how to manage his Defence; a Favour, that I believe the Faction never allowed their Adverſaries, when they had any Influence on Affairs.

I muſt confeſs, I ſee no Reaſon, why a Priſoner ſhould not be allowed Counſel, Sollicitors, and all the Aſſiſtance imaginable, to defend himſelf; when the greateſt Lawyers are always employed to run him down, and make him appear as black as Hell, be he never ſo innocent.

The Preamble to the Act, which allows a Priſoner Counſel at this Day, obſerves, *that this was reaſonable*; and, as one obſerved, who was tried the Day before the Act took Place, If it would be reaſonable the next Day, it was reaſonable then; and indeed, if it was once reaſonable, it was always ſo: Nor could it be any more the Intereſt of the King and Government, that an innocent Man ſhould be put to Death, than that a Traitor ſhould be acquitted. All poſſible Means ought to be allowed, to come at the Truth, whether it make for, or againſt the Priſoner; and as the King's Council are ever employed to ſet the Priſoner's Words and Actions in the worſt Light; unleſs he be allowed Counſel, on the other

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other hand, to put the beſt Conſtruction upon them, and prevent the Laws being ſtretched and wreſted to his Ruin, he ſeems to have but an indifferent Chance for his Life.

I am very ready to admit, that all thoſe Witneſſes againſt *Colledge*, who had been Witneſſes of the pretended Popiſh Plot, were a Pack of mercenary Raſcals, as well as *Oates*, *Bolron*, *Mowbray*, and ſeveral others, who appeared for the Priſoner at this Trial: But as their Teſtimony was confirmed by other Gentlemen, of unqueſtionable Credit; as *Colledge* actually came down to *Oxford* with others, who had *armed themſelves, to defend the Parliament*, as the Priſoner himſelf declared; as thoſe ſcandalous Ballads, Pictures, and Libels, were ſeized in his Houſe; and as he ſung thoſe Ballads, and explained the Deſign of the Pictures, in the moſt publick Places: As he diſtributed Ribbons, with the Motto, *No Popery, No Slavery*; plainly intimating, that the King and Court were about to ſubvert the eſtabliſhed Religion and Government: As he declared, that they armed themſelves againſt the Papiſts; and in the Pictures and Ballads, evidently ſhewed, that by Papiſts, they meant the King, and Miniſtry, the Biſhops, and all the Members of the eſtabliſhed Church: As the Witneſſes that ſwore againſt the Priſoner, had been his moſt intimate Acquaintance; Men, whom he had ſuborned to ſupport the Credit of the Popiſh Plot; and to ſupport whoſe Evidence, he actually appeared, as a Witneſs at Lord *Stafford*'s Trial: If all this be conſidered, no Man can make any Doubt of his Guilt; though many Particulars, the Witneſſes ſwore, ſhould be admitted to be falſe.

Far be it from me, to traduce any Man's Memory, or load him with Guilt, where his Crimes are not manifeſt to every impartial Man; nor would I endeavour to make him more criminal, than he really was: I am ready to admit, in Favour of this Man, that it is a Queſtion, Whether *he knew* himſelf guilty of High-Treaſon? He could not be ignorant indeed, of his ſaying and doing many Things, which the Law conſtrues Treaſon; but his Maſters, who ſet him to work, had furniſhed him with a Set of Notions for their Purpoſe, which proved the Ruin of the unhappy Priſoner: As, that it was lawful, nay, the Buſineſs and Duty of all private Men, *to arm themſelves in Defence of the Parliament* againſt the King, even without their Orders, and before they declared themſelves to be in any Danger; notwithſtanding a late Act of Parliament then in Force, which declared, That if any one ſhould compaſs, imagine, or intend, the Death of the King, his Deſtruction, or any bodily Harm, any Reſtraint of his Liberty, or Impriſonment of him; or, if any ſhould deſign to levy War againſt him, and ſignify, and declare this, by writing, preaching, printing, or adviſed malicious ſpeaking; this ſhould be adjudged High-Treaſon: And, notwithſtanding another Act of Parliament, which declared, That it was not lawful for both, or either of the Houſes of Parliament; nor for the People, collectively or repreſentatively, to take up Arms againſt the King: And, if theſe Arms were not intended againſt the King, the Adminiſtration, and the eſtabliſhed Religion and Government; I muſt confeſs, I am at a Loſs to know, againſt whom they were intended; for all theſe were declared, by *Colledge* and the Faction, to be *Popiſhly affected. The Presbyterians, and other Sectaries were deemed the only true Proteſtants; nay, the only true Church of* England: *All the reſt were but Proteſtants in Maſquerade*, according to the frequent and publick Declarations of *Colledge* and the Faction. And as to that Objection of the Priſoner's, *What could he, a ſingle Man of no Figure, do towards ſeizing the King's Perſon, or attacking his Guards?* He has, in a great Meaſure, anſwered the Objection himſelf, when he acknowledges, many more armed themſelves, and came down to *Oxford*, with the very ſame View he did, namely, to guard and defend the Parliament, againſt the Encroachments of the Crown; nay, he avers at his Trial, that almoſt all Men had furniſhed themſelves with Arms at that Time; and that ſcarce a Carpenter or a Poulterer rode out of *London*, without a Caſe of Piſtols before him: And though he enlarged a little here, few Mechanicks *riding with Piſtols before them*; yet, this I can ſay, That the Faction having alarmed the Nation with an Expectation of a general Maſſacre by the Papiſts; the Diſſenters, and a great many others, that did not ſee through the Artifice, had furniſhed themſelves with Pocket-Piſtols, and Bayonets, or Daggers; and even carried them to Church with them, to defend themſelves, in caſe of an Attack: And one of theſe deluded Men, when the Fright was over, actually preſented the Writer of theſe Sheets with a Brace of Pocket-Piſtols, which he had provided on this Occaſion; inſomuch, that I queſtion whether there were leſs than an hundred thouſand Men thus armed, as ſome of the Witneſſes depoſed. Let me add further, that it was the Opinion of *Colledge* and the Faction, That if his Majeſty refuſed to model his Miniſtry, as they directed, and make Laws for the Excluſion of a Popiſh Succeſſor, and ſecuring *the Proteſtant Religion*; they might ſeize the King's Perſon, and compel him to ſubmit to their Demands.

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And, ſuppoſing ſome thouſands of theſe Men, thus armed, and thus principled, had come down to *Oxford*, under Pretence of defending the Parliament, and the Proteſtant Religion, againſt *Papiſts*; and who had been taught, that the King, the Adminiſtration, and all the Friends of the Government, were of that Number; and in that Situation any Tumult, or Quarrel, had happened, and the *Whig-Leaders* had given out, that the Papiſts were about to fall upon them, and cut their Throats; whether the King's Life and the Government, had not been in imminent Danger; and whether any thing leſs could have been expected, than another general Rebellion, equal at leaſt to that of 41, wherein many innocent People muſt have been involved, who did not yet ſee through the traiterous Deſigns of the Faction; and who, having drawn their Swords againſt the King, would have found it impracticable to deſert

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the Rebels, and return to their Allegiance with Safety; as was the Caſe of many in the former Rebellion.

It is not, therefore, only the Laws of this Realm, which make it High-Treaſon, in private Men, to aſſemble in Arms, to ſecure and reform the State, without the King's Authority, much leſs againſt his Conſent); but it is impoſſible for any Government to ſubſiſt, if this be allowed: Nor is there a Republick in Chriſtendom, but would have condemned ſuch Subjects as Traitors, who ſhould have taken Arms with ſuch Views as theſe.

If it be ſaid, It was hard to hang a Man for ſuch Facts, when he did not know them to be Treaſon; it may be anſwered, If this were an Excuſe, then no Man could ever be convicted of Treaſon: Every Man might pretend, that he did not know what Treaſon was. Here were Acts of Parliament lately made, declaring, That no Perſon whatſoever, had any Coercive Power over the King; and his not knowing it, did not make the Fact ever the leſs treaſonable. That very Perſuaſion, that he acted according to Law and Goſpel, in compelling the King to yield to the Demands of the Faction, rendered it neceſſary to make an Example of him: If ſuch Attempts had been ſuffered to go unpuniſhed, it would have been impoſſible to preſerve the Government, or prevent another Rebellion. And I make no Manner of Doubt, but the ſteady Proſecution of this Man, and thoſe of his Principles, at that Time, did actually prevent their breaking out into open Rebellion; for the Malecontents were never better prepared for one; no, not in 41.

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I ſhall conclude with obſerving, that even the Uſurpers, in the Year 1649, made it High-Treaſon to traduce and arraign their Adminiſtration: And if ſo, ſurely the Faction can never have the Face to ſay, That their Champion, *Colledge*, had hard Meaſure in being condemned for High-Treaſon, who made it his *Buſineſs* to calumniate and aſperſe his lawful Sovereign, in order to render him odious and contemptible to his People, and incite another Rebellion; and actually took up Arms againſt him.

The Words of the Uſurper's Ordinance, which paſſed in the Year 1649, were, *That* "Whereas the Parliament had aboliſhed "Kingly Government, and reſolved that the "People ſhould be governed by their own "Repreſentatives; *It was thereby enacted, That whoſoever ſhould maliciouſly publiſh, by writing, printing*, &c. *that the ſaid Government was tyrannical, uſurped or unlawful, and not the Supreme Authority; or ſhould plot, or endeavour to ſtir up, or raiſe Forces againſt the preſent Government, for the Subverſion thereof, or againſt the Keepers of the Liberties of* England, *or the Council of State, or any of them, ſhould be deemed guilty of High Treaſon.*

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Bethel's Trial.

The Trial of SLINGSBY BETHEL, Eſq; for an *Aſſault and Battery* on ROBERT MASON, at the *Bridge-Houſe* in *Southwark*, *October* the 5th, 1681. 33 *Car.* II.

The Charge.

THE Indictment charged the Defendant, *Slingsby Bethel*, Eſq; with an Aſſault and Battery on the ſaid *Robert Maſon*, on the 12th of *March* laſt, and with uſing theſe threatening Words to the ſaid *Maſon*, (viz.) *Sirrah, I will have your Coat pulled off your Back.*

Opened by the King's Counſel.

The King's Counſel, Mr. *Holt*, in opening the Indictment, obſerved, That in *March* laſt there was an Election for two Burgeſſes to ſerve in Parliament for this Borough of *Southwark*; and, that the ſaid *Robert Maſon* was deſired to come from *Lambeth*, to ſee if any of that Pariſh came to poll, who had not a Right to vote: That the Candidates were Sir *Richard Howe*, Capt. *Rich*, the ſaid *Slingsby Bethel*, and *Edw. Smith*, Eſq; That *Bethel* ſtruck ſeveral Perſons that acted againſt him, and particularly this *Maſon*; and knowing him to be the King's Waterman, ſaid, He deſerved to have his Coat plucked over his Ears; and had the Waterman ſtruck him again, a great Tumult had enſued; but he prudently refrained, and had taken his Courſe in a legal Way: And though *Bethel* was a a great Man, lately Sheriff of *London*, and *Robert Maſon* but a poor Waterman, he did not queſtion, but an *Engliſh* Jury would do him Right.

The Evidence.

The Witneſſes being called, *Robert Maſon* depoſed, That as he was ſtanding on the Stairs, going up to the Poll, the Defendant ſtruck him twenty Blows, at leaſt, with his Cane, and told him, he would pluck his Coat over his Ears; and that he replied, ſo he would his Maſter's if he could: That he afterwards ſtruck him *(Maſon)* ſeveral Blows with his Fiſt, on the Breaſt.

Adams, a Conſtable, alſo depoſed, That he ſaw the Defendant ſtrike *Maſon* three Shugs (or Blows) on the Breaſt, and heard him ſay, *Sirrah, I will have your Coat off your Back*; and that *Maſon* anſwered, *Ay; and ſo you would my Maſter's if you could:* And that, when *Bethel*'s Party came in, they cried out, *No Abhorrers, no Abhorrers.*

Walbroke, a third Witneſs, made Oath, That he ſaw *Bethel* thruſt the ſaid *Maſon* down the Stairs, and give him two or three Puſhes on the Breaſt.

Smith, another Witneſs, depoſed, That *Bethel* brought a Multitude of People with him; bid *Maſon* come down the Steps, and puſhed him on the Breaſt: And two or three Witneſſes more depoſed to the ſame Effect.

Bethel's Defence.

Bethel, the Defendant, on the other Hand, brought ſeven or eight Witneſſes, who depoſed, That they were at the Election, and ſaw no Blows given by Mr. *Bethel*; but that he ſaid to *Maſon*, *Friend, what haſt thou to do here? Haſt thou any Right to poll? Pray go about your Buſineſs*; and gently led him down

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down the Steps: Which the Defendant's Counsel insisted, was lawful; *Mason* having no Right to poll; and only coming to hollow, and make a Disturbance, in Behalf of the other Candidates. But the Court observing to the Jury, that the Battery was well proved, they found the Defendant *Guilty*.

Bethel's Counsel afterwards moving in Arrest of Judgment, That no Indictment lay for the Words; the Court stayed the Judgment, as to that Part of the Indictment: And as to the Assault and Battery, fined the Defendant five Marks, which he paid before he went out of Court: The King's Counsel moving, that he should be taken into Custody, till it was paid.

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He is convicted, and fined.

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Proceedings against ANTHONY Earl of *Shaftesbury*, for *High Treason*, at the *Sessions* at the *Old Baily*, *Nov.* 24th, 1681. 33 *Car.* II.

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Lord Shaftesbury's *Case.*

THE Grand Jury being sworn, among whom were Sir *Sam. Barnardiston* (Foreman) *Tho. Papillon*, *John Dubois*, *Humphry Edwyn*, *Michael Godfrey*, (Brother to Sir *E. Godfrey*) *Thomas Shéphard*, and several more of the same Stamp, the Lord Chief Justice *Pemberton* gave them their Charge. Wherein he observed, That the Statute of 25 *Edw.* III. had ascertained what should be deemed Treason: But that the Statute of the 13th of his present Majesty, had gone something farther, being levelled particularly against the Principles and Practices of such Persons as had cut off his Father's Head, and maintained a dangerous War against himself, to the utter Ruin and Extirpation almost of his Majesty, the Royal Family, and his faithful Subjects.

The Charge of the Chief Justice to the Grand Jury.

That, by this last Act, the very *Intention* of levying War was made Treason; which was not so before: And the very *Designing* to destroy the King, to put a Force upon him, or restrain him of his Liberty, though not manifested by Overt-Acts, were made High-Treason, if this was evident from Words only; which was not held to be so before: And this was done, to prevent such seditious and licentious Discourses, as were the Occasion of the late Confusions.

That, as to the Bills to be brought before them, they were to consider, if the Matter in them were Treason within either of the above-said Statutes: And if there were two Witnesses to treasonable Words, spoken at one, or different Times; and if, by the Evidence produced, there was *probable* Grounds, to call the Persons accused to an Account, That was as much as the Law required, to induce them to find the Bill.

That it was equally a Crime to acquit the Guilty, as to charge the Innocent: That they were under a double Obligation of doing Right, 1. As they were Members of one great Body, or Society, of which the King was the Head: And, 2. as they were under an Oath, to go according to their Evidence.

Moved, That the Evidence might be given openly in Court.

Then a Bill of High Treason being exhibited against the Earl of *Shaftesbury*, the King's Counsel moved, that the Evidence to the Grand Jury might be given publickly in Court.

To which the Chief Justice answered, That this, being desired to prevent any false Reports concerning the Evidence for the King, could not be denied: Whereupon the Jury desired a Copy of their Oath, and withdrew; and being returned, the Foreman insisted, that it was *their Right* to examine the Witnesses in private: And besides they were sworn to keep the King's Secrets; which, he observ'd, they could not do, if the Examination was publick.

Opposed by the Grand Jury.

The Chief Justice replied, This was not their Right: The original Practice was otherwise; and it was still every Day's Practice in Term Time: The Evidence to the Grand Jury was heard in Court, if desired: He never knew it denied. As to their keeping their Counsels, that related to their Debates; and, where the King himself dispensed with the Privacy, and desired the Examination might be publick, they could be under no Manner of Obligation to conceal it.

Their Objections answered.

The Jury still objecting, That a publick Examination might prejudice the King's Affairs, and give Delinquents an Opportunity of getting out of the Way; the Court answered, The King's Counsel, who had already examined the Witnesses, best knew that; and if they were not satisfied, it could be no Prejudice to the King's Affairs, they would not have desired the Examination to be publick.

An Association proved to be found in the Earl's Study.

Lastly, the Jury desiring, that it might be recorded, that *they insisted on their Right of Examining Witnesses privately*; the Court answered, they were not to record what every Man desired. However, they need not fear but there would be Witnesses enough of their Demand.

Mr. Sheriff *Pilkington* then desiring, that the Witnesses might be kept out of Court, and called in one by one; the Court told him, A Sheriff had nothing to do to move Things of that Nature: However, the King's Counsel were not afraid of having their Witnesses separately examined.

The Bill of Indictment.

Then the Indictment was read in *English*, which set forth, That *Anthony* Earl of *Shaftesbury*, late of *St. Martin's in the Fields*, in the County of *Middlesex*, did, on the 18th of *March*, in the 33d Year of his present Majesty, and at divers other Days and Times, at the Parish of St. *Mary le Bow*, in the Ward of *Cheap*, *London*, traiterously compass and imagine the Death of the King, and the Subversion of the Government, and to levy War against his Majesty; and, to effect the same, did provide and prepare several armed Men; and did traiterously meet and consult with *John Booth*, and others, the King's Subjects, how

They vow, to disband the King's Guards.

To exclude the Duke of York.

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how to effect the ſame; and did adviſe and perſuade them, to be aiding and aſſiſting to him in his ſaid traitorous Purpoſes: And that he did, at the Day and Place aforeſaid, traitorouſly and maliciouſly, aſſert and declare, That in a ſhort Time the Parliment was to meet at *Oxford*; and he, having inſpected the Elections, and conſidered the Diſpoſitions of the Generality of the Members, was ſatisfied the Parliament would inſiſt upon three Matters; namely, The Bill of Excluſion againſt the Duke of *York*; the aboliſhing the 35th of *Elizabeth*; and the paſſing a New Bill, for the uniting Proteſtants; with divers other good Bills: To which he, the ſaid Earl, ſaid, he was certain the King would refuſe his Aſſent; and, therefore, he expected there would be a Diviſion between the King and Parliament: and, that many Noble Lords, and worthy Members of the Lower Houſe, did concur in the ſame Opinion; and were reſolved to inſiſt on paſſing thoſe Bills: And, if the King refuſed, they had provided a Strength to compel the King to grant them. And, for his part, he (the ſaid Earl) had provided ſtout Men to be commanded by Capt. *Wilkinſon* (of whom the ſaid *John Booth* was to be one :) And, that the ſaid Earl did, at the Time and Place aforeſaid, declare, That the King was a Man of no Faith; there was no truſting him; he deſerved to be depoſed, as well as *Richard* II. And, that he, the ſaid Earl, would never deſiſt, till he had brought this Kingdom of *England* to a Common-wealth, without a King: They would live as in *Holland*; and the King and all his Family ſhould be rooted out: Adding, That the King was falſe, unjuſt, and cruel to his People; and if he would not be governed by his People, he, the ſaid Earl, and the ſaid other falſe Traitors, would depoſe him.

An Aſſociation proved to be found in the Earl's Study.

The Witneſſes being called, The Clerks of the Council, and the Secretaries of State, firſt proved, that an Aſſociation was found, locked up in the Earl of *Shaftesbury*'s Study, of the following Tenor *(viz.)*

" I *A. B.* do, in the Preſence of God, " ſolemnly promiſe, vow, and proteſt, to " maintain and defend, to the utmoſt of my " Power, with my Perſon and Eſtate, the " true Proteſtant Religion, againſt Popery, " and all Popiſh Superſtition, Idolatry, or " *Innovation*, and againſt all thoſe who do " or ſhall endeavour to ſpread or advance it " within this Kingdom. I will alſo, as far " as in me lies, maintain and defend his " Majeſty's Royal Perſon and Eſtate; *as al-* " *ſo the Power and Privilege of Parliaments*; " *the lawful Rights and Liberties of the Sub-* " *ject, againſt all Encroachment of Arbitrary* " *Power whatſoever*; *and endeavour entirely* " *to disband all ſuch mercenary Forces as we* " *have reaſon to believe were raiſed to advance* " *it*; *and are ſtill kept up in and about the* " *City of* London, *to the great Amazement* " *and Terror of the good People of the Land*".

They vow, to disband the King's Guards.

To exclude the Duke of York.

By the next Clauſe, they declare, " They " will, by Force, exclude the Duke of *York*, " and all that are popiſhly affected, from the " Crown: And laſtly, they ſay, *We do pro-* " *miſe and vow, before God, with our joint* " *and particular Forces, to follow ſuch Orders* " *as we ſhall from Time to Time receive from* " *this preſent Parliament, while it ſhall be ſitt-* " *ing (or the major Part of the Members of* " *both Houſes, ſubſcribing this Aſſociation,* " *when it ſhall be prorogued or diſſolved)*; *and* " *obey ſuch Officers as ſhall by them be ſet over* " *us, in the ſeveral Counties, Cities, and Bo-* " *roughs, until the next Meeting of this, or* " *another Parliament*; *and then will ſhew the* " *ſame Obedience and Submiſſion to it, and* " *thoſe who ſhall be of it.*"

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They transfer their Allegiance to a Majority of the Conſpirators.

The aboveſaid Aſſociation having been read in open Court, Mr. *Booth* was called, and depoſed.

Booth's *Evidence againſt Lord* Shaftesbury.

That he was introduced to the Lord *Shaftesbury*, in *January* laſt, by his Friend, Capt. *Henry Wilkinſon*. The Captain had been an old Royaliſt, and ſerved his Majeſty, and his Father, in the late Wars; but miſſing the Preferments and Rewards he expected from the King, was become a Malcontent, as he (the Witneſs) alſo was; and they often diſcourſed, *at Lord Shaftesbury*'s, of the proroguing of the Parliament, the Diſappointments of the People, and their Fears of Popery, and Arbitary Power: And that they had a continual Club; and converſed together near three quarters of a Year: That his Lordſhip uſed to inveigh ſharply againſt the Times; and did not think himſelf regarded and preferred, as he ought to have been; and expreſſed his Fears of Popery, and Arbitrary Power.

That, when the Elections came on, they had a weekly account of ſuch Members as were choſen, and conſidered their Inclinations, and Diſpoſitions: And his Lordſhip ſaid, The Parliament that was to ſit at *Oxford*, would inſiſt on the ſame Things the other Parliaments had done; particularly, they would never grant the King Money, or aſſiſt him, unleſs he gave the People Satisfaction in thoſe Things they inſiſted on before, (*viz.*) The Bill of Excluſion: The Repeal of the 35th of *Elizabeth* (againſt Conventicles); and paſſed a new Act, to exempt Diſſenters from the Penal Laws.

If the King would paſs ſuch Acts, and ſome other wholeſome Laws for their Security, he believed they would grant him Money for his neceſſary Occaſions: But, if he refuſed this, his Lordſhip believed there would be a Breach between the King and Parliament.

That the Reaſon of appointing the Parliament to meet at *Oxford*, was, that the Court might over-awe them: That his Lordſhip and ſeveral other Peers, judged it dangerous to go to *Oxford*, where the Guards, the Retinue of the Court, and the Scholars, who uſually inclined to the Crown, might over-awe them; and therefore they thought it was fit they (the Parliament) ſhould have Guards ſent down thither; and accordingly, his Lordſhip had eſtabliſhed about fifty Men, Perſons of Quality, that he believed would have Men along with them: That he had entruſted Captain *Wilkinſon* with the Command of theſe Men, and they were to be at *Oxford* at a certain Time; and, if there happened to be a Breach between the King and Parliament, or any Violence offered to the Members, theſe Men, and others that were pro-

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provided by other Lords, were to repel Force by Force, and purge the Guards of all the Papiſts and Tories: They were likewiſe to purge the King's Council; and particularly to remove the Earl of *Worceſter*, the Lords *Clarendon*, *Halifax*, and *Feverſham*, and Mr. *Hyde*, as dangerous Perſons, who were ſuppoſed to adviſe the King againſt what the Parliament urged him to: And it was reſolved to bring the King to *London*, and have Things ſo eſtabliſhed, as might preſerve them from Popery and Arbitrary Power.

That after theſe Debates, Captain *Wilkinſon*, deſired the Deponent to be one under his Command, and to provide himſelf, and his Man, with Horſe and Arms, which the Deponent did in *March* laſt, before the Parliament met at *Oxford:* That enquiring at *London* afterwards, how things went on at *Oxford*, they found it to be as Lord *Shaftesbury* had foretold; but did not imagine, they would have been ſo ſoon diſſolved: That on the *Thurſday* before the Parliament was diſſolved, Captain *Wilkinſon* told the Deponent, he expected a Summons that very Week, to go to *Oxford*, with thoſe Men that were liſted under him: But News coming to Town on *Saturday*, of the Diſſolution of the Parliament, nothing was done.

The King's Counſel demanding, If he had any Diſcourſe with Lord *Shaftesbury*, after Captain *Wilkinſon* ſpoke to him; Mr. *Booth* anſwered, That the firſt Motion for fifty Men to be Lord *Shaftesbury*'s Guard, came from Captain *Wilkinſon*; but afterwards, he heard the Lord *Shaftesbury* diſcourſe of it himſelf, at his own Houſe.

Turbervile's *Evidence.*

Turbervile depoſed, He heard Lord *Shaftesbury* ſay, There was little Good to be had of the King, while his Guards were about him: That if it was not for them, they would ſoon go down to *White-Hall*, and obtain what Terms they ſaw fit.

Smith's *Evidence.*

Smith depoſed, He had been often at Lord *Shaftesbury*'s, and frequently heard him ſpeak irreverently of the King; ſaying, He was a weak, inconſtant Man, and led by the Noſe, as his Father was, by a Popiſh Queen: That his Lordſhip once ſent Captain *Manley* for the Deponent, and the Captain found him at Mr. *Bethel*'s Club, at the *Queen's-Arms* in *Newgate-Street*; and that he, (the Deponent) immediately attended my Lord, who deſired him to manage the *Iriſh* Witneſſes, and perſuade them not to go near that Rogue *Fitzgerald*, who was maintained by the King; and that he went accordingly to thoſe Witneſſes, who promiſed they would not go near *Fitzgerald.*

That a little before the Parliament met at *Oxford*, he heard Lord *Shaftesbury* ſay, They were more reſolute than ever; for they ſaw plainly, the King aimed at bringing in Popery; and they had this Advantage, if he offered them any Violence, (as they expected he would,) that they had the Nation for them: They might lawfully oppoſe him, and he would meet with a very ſtrong Oppoſition; for all that came out of the Country, would be well horſed, and armed; and that, old as he was, he would oppoſe it to his Power: That the Deponent obſerving, this would engage the Nation in another Civil War; and that they ſhould either make an End of Monarchy, or enſlave the Nation to Popery for ever; his Lordſhip anſwered, No Doubt of one; but they were ſure the Nation was on their Side: Adding, That the Deponent knew how the City were; and wherever they ſtruck, he were ſure the Nation would. Some other Witneſſes depoſed, They had heard Lord *Shaftesbury* ſpeak ſcandalouſly of the King: That he took the ſame Courſes, which brought his Father's Head to the Block; and they would bring his thither: That he deſerved to be depoſed, as much as ever King *Richard* II. did, *&c.* Theſe laſt Witneſſes were *Iriſhmen*, who depoſed, they had been a great while maintained and ſupported by the Lord *Shaftesbury*, (who would have made them Witneſſes of the Popiſh Plot, and *Godfrey*'s Murder.

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Queſtions put by the Grand Jury to the Court and the Witneſſes.

The Evidence for the King being concluded, the Grand Jury withdrew, to conſider what Queſtions they ſhould ask the Witneſſes: And being returned, demanded, on what Statute the Indictment was founded; and were told, that it was founded both on the 25 *Edw.* III. and the Thirteenth of his preſent Majeſty; and upon all other Statutes that made it High-Treaſon to conſpire againſt the King; for it concluded *contra formam Statut'*, which might be underſtood, *Statuti*, or *Statutorum.*

Then the Jury demanded, If the Witneſſes were indicted; but were told, the Proofs concerning the Credibility of the Witneſſes, were not properly before them: That was to be conſidered by the Petty Jury, at the Trial; where the King might be heard, to defend the Credit of his Witneſſes, if any thing was objected againſt them: They were only to conſider, whether there was treaſonable Matter atteſted by two Witneſſes, who *prima facie*, were to be deemed credible; unleſs they, of their own Knowledge, knew the contrary.

The Jury afterwards endeavoured to confound the Witneſſes, by putting ſeveral captious Queſtions to them; but they ſtood to their Teſtimony, and anſwered very clearly and pertinently: Whereupon they were ſo inſulted and abuſed by the factious Mob, that they were ſeveral Times forced to deſire the Protection of the Court; and the Chief Juſtice let Sheriff *Pilkington* know, that if they received any Hurt, he ſhould be anſwerable for it; but he did not ſeem very ready to afford them any Aſſiſtance.

At length *Papillon*, and the reſt of the Malcontents upon the Grand Jury, having brow-beaten and baited the King's Witneſſes, as long as they ſaw fit; the Lord Chief Juſtice *North* told them, They had beſt go and conſider of their Evidence, Whether it was fitting for the King to call the Lord *Shaftesbury* to Account for Treaſon? Obſerving, that one of the Ends of the Aſſociation, found in his Study, was, to deſtroy the mercenary Forces about *London* and *Weſtminſter*, and to put the Government into the Hands of a Majority of the Members of Parliament, without the King: Nor was this to be done by Act of Parliament, according to the Tenor of that Paper.

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The Jury return Ignoramus.

The Jury withdrawing, returned ſome time afterwards into Court, with an IGNORAMUS; at which the factious Mob hollowed and ſhouted, as if they had gained a notable Victory. The ſame Night, Bonfires were made in the City, and the Air rung with the Cries of, A MONMOUTH, A SHAFTESBURY, A BUCKINGHAM.

The Sheriffs, being of Lord *Shaftesbury*'s Faction, had taken care to have a Grand Jury of their own Party; Men, they were morally ſure, would ſcreen and favour the Earl, if they were not Accomplices in his Treaſons.

Remarks

The Chief Juſtice ſeems to have forgot himſelf, when he ſays, a Conſpiracy to levy War, or to impriſon the King, and put Reſtraints upon him, were not Treaſon, before 13. *Car.* II. for the Reader will obſerve, that at ſeveral Trials in this Work, the Judges have been of Opinion, That a Conſultation or a Conſpiracy to levy War, or put any Reſtraint upon the King, are, either of them, an Overt-Act of compaſſing and imagining the King's Death, by 25 *Edw.* III.

The true Reaſon why the Grand Jury would have examined the Witneſſes privately, it is evident, was, to cover their own Diſaffection; and that the World might not ſee what Grounds there were for charging the Earl and his Faction with High-Treaſon: The Aſſociation found in his Study, in which the Party agree to ſeize on the King's Guards; to transfer their Allegiance to others, and compel the King to model both Church and State, as the Faction ſhould direct, was certainly Foundation ſufficient for them to have found the Indictment, and put the Earl upon his Trial, had the Jury themſelves been entirely innocent; but what could be expected from Men that were involved in the ſame Crimes?

Booth's Evidence, who had been a Malcontent, and engaged in the Conſpiracy, to ſeize and put a Force upon the King, was unanſwerable; and ſhews, that the Deſigns of the Party were conformable to what had been vowed in the Aſſociation found in the Earl's Study. And we find there were five or ſix Witneſſes more, which charge him home with levying Forces, and appointing them to rendezvous at *Oxford*; and of his threatning to depoſe his Majeſty, if he refuſed to be governed by them, which was Treaſon, by the Thirteenth of this King, if it was not by the Statute of 25 *Edw.* III: And all this Evidence is a ſtrong Confirmation of *Colledge*'s Guilt, who was convicted and executed for the ſame Treaſons.

As to that Objection, that ſome of the Witneſſes were of the *Iriſh* Nation, it may be anſwered, that ſeveral of them were not: And moſt of the Witneſſes, even thoſe of *Ireland*, were ſuch as the Lord *Shaftesbury* himſelf had picked up, ſubſiſted and maintained, to make them Evidence againſt other Men, of their being concerned in the Popiſh Plot and *Godfrey*'s Murder; in which Service, their being of the *Iriſh* Nation was no Objection to their Credit; and if the Party did really think they ought not to be credited, they can never excuſe their putting to Death Dr. *Plunket*, and ſeveral more upon the like Evidence: But further, as theſe Men were Dependants and Agents of Lord *Shaftesbury*, no Wonder they ſhould have heard him talk freely of the King and Government: He muſt uſe ſome Freedoms with them, in order to debauch them from their Allegiance, and form them for the ſeditious and traitorous Purpoſes he deſigned them. And, would any Grand Jury at this Day, refuſe to find a Bill, where Treaſon was poſitively ſworn by ſeven or eight Men, *Engliſh* as well as *Iriſh*, becauſe ſome of the Witneſſes were of the *Iriſh* Nation? Is Truth confined to any one Nation or Set of People? Or could the Faction lay a better Claim to our Belief, than the *Iriſh*? If they had any Reaſon to reject the Teſtimony of thoſe Gentlemen, it muſt be, becauſe they knew they had ſuborned them to ſwear falſly againſt other Men they knew to be innocent; at leaſt, much more innocent than they knew their Friend the Earl to be. And, as the Court rightly inſiſted, if the Evidence had not been ſufficient to have induced his Peers to have convicted him upon Trial, it was however abundantly ſufficient to put him upon his Trial, and ſee what he could ſay in his Defence: And indeed we find his Lordſhip, after his Friends the *Whig* Sherriffs, were out of Office, and he could not expect another packed Grand Jury, durſt not abide a freſh Enquiry into his Conduct; but fled to *Holland*, from the Hand of Juſtice.

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Nor were the City, or the Nation in general, even at that Time, entirely ſatisfied of the Earl's Innocence, notwithſtanding this Grand Jury had returned an *Ignoramus*; for, it appears, that Addreſſes immediately came from all Parts, expreſſing their Deteſtation of this Aſſociation; and promiſing to ſtand by his Majeſty, with their Lives and Fortunes, againſt theſe Enemies of Monarchy and the Conſtitution.

The Juſtices of Peace for *Middleſex* particularly take Notice, That his Majeſty's Enemies were neither ſo numerous, or ſo formidable, as they were by ſome pretended to be; and deſired his Majeſty, ſince he had now no Cauſe to fear them, he would never be prevailed on to truſt them again.

In the Addreſs from the Lawyers of the *Temple*, they ſay, They thought themſelves obliged by their Profeſſion, to declare their Senſe of that execrable Paper (found in Lord *Shaftesbury*'s Study,) purporting a traitorous Aſſociation: That it was their Opinion, it contained groſs and apparent Treaſons, more manifeſtly tending to the Ruin of his Majeſty's Dominions, than the old hypocritical SOLEMN LEAGUE AND COVENANT.

The City of *Briſtol*, in their Addreſs, declare their Abhorrence of all *Covenants* and *Aſſociations* whatever, without his Majeſty's Approbation; eſpecially that Treaſonable one found in the Earl of *Shaftesbury*'s Cloſet: Wherein *The ſecuring the Proteſtant Religion, and the Defence of the King, was the Pretence; but the Subverſion of the Eſtabliſhed Religion, and the final Deſtruction of his Majeſty, and his lawful Succeſſors, was the real Deſign.*

I ſhall conclude my Remarks on this Proceeding, with obſerving, That the *Whigs* of thoſe Days thought the King's Guards alone, though not near ſo numerous as they were in

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ſucceeding Reigns, an unlawful Force, and deſtructive to the Conſtitution; as appears by the aboveſaid Aſſociation, and their repeated Conſpiracies about that Time, to disband and break them, in Defiance of their Sovereign.

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The Trial of ARCHIBALD Earl of *Argyle*, for *High-Treaſon*, at *Edinburgh*, the 12th of *December*, 1681. 33 *Car.* II.

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Argyle's Trial.

A Teſt having been eſtabliſhed in *Scotland*, to be taken by all Perſons on their Admiſſion to any Office or Place in the Government, the Earl of *Argyle* took it as a Privy-Counſellor, the third of *November*, having firſt declared his Senſe, and given this Explanation of it, (*viz.*) "That he had conſidered the *Teſt*, and was very deſirous to give Obedience as far as he could. He was confident the Parliament never intended to impoſe contradictory Oaths; therefore he thought, no Man could explain it, but for himſelf; and accordingly he took it, as far as it was conſiſtent with itſelf, and the Proteſtant Religion: But he meant not to bind up himſelf in his Station, and in a lawful Way to wiſh and endeavour any Alteration, he thought to the Advantage of Church and State, or repugnant to the Proteſtant Religion, or his Loyalty. And this I underſtand as a Part of my Oath.

His Explanation of the Teſt.

The Earl coming the next Day, to take the Teſt again, as one of the Commiſſioners of the Treaſury, produced a Paper; containing the Explanation, with which he had taken the Teſt the Day before; and refuſing to take it ſimply, without that Explanation, he was committed to the Caſtle of *Edinburgh*, and ordered to be proſecuted, as the Author of that Paper, by his Majeſty's Advocate: And an Indictment was preferred againſt him; ſetting forth, That notwithſtanding his Majeſty had beſtowed on the ſaid Earl a vaſt Eſtate, which was forfeited to his Majeſty by the Earl's Father; and alſo had pardoned and remitted to the preſent Earl, the Crimes of Leaſing-making, and miſconſtruing his Majeſty's and the Parliament's Proceedings, for which he had been condemned to die; raiſed him to the Dignity of an Earl, *&c.* yet he had not only refuſed to take the Teſt in the genuine Senſe, but had declared againſt and defamed the Act that required the taking of it; and to corrupt others, had drawn up his Senſe of it in a Libel, and diſperſed Copies thereof, in order to make ill Impreſſions on the People: That by his declaring in that Libel, *He had conſidered the* Teſt, *and was deſirous to give Obedience, as far as he could; he inſinuated, he was not able to give full Obedience:* By his ſaying, *He was confident, the Parliament never intended to impoſe contradictory Oaths*, he would induce the People to believe the Parliament had been ſo impious and ridiculous as to impoſe contradictory Oaths: That by affirming, *Every Man muſt explain it for himſelf, and take it in his own Senſe*, all Oaths and Laws were rendered uſeleſs. And by his ſaying, *He took the* Teſt *ſo far only, as it was conſiſtent with itſelf, and the Proteſtant Religion*, he maliciouſly intimated to the People, That the Oath was inconſiſtent with itſelf, and the Proteſtant Religion; thereby miſrepreſenting his Majeſty and the Parliament, in the higheſt Degree: And by declaring, *That he did not mean, by taking the ſaid* Teſt, *to bind up himſelf from wiſhing and endeavouring any Alteration in a lawful Way, that he ſhould think fit, for advancing of Church and State*, he did, by his Example, invite others to think themſelves looſed from that Obligation, and teach them to make any Alteration, either in Church or State, as they ſhould think fit. And, that by his Concluſion, (*viz.*) *This I underſtand as a Part of my Oath*; he invaded the Royal Legiſlative Power, making an Act of Parliament to himſelf; for he who could make any Part, might make the Whole.

The Charge againſt him.

The Earl being brought to his Trial, before the Earl of *Queensberry*, Lord Juſtice-General, and the Lords *Nairn*, *Collingtoun*, *Forret*, *Newtoun*, and *Kirkhouſe*, Lords of the Juſticiary, on the 12th of *December*, Sir *George Lockhart*, his Advocate, entered upon his Defence, and ſaid, The Words laid in the Indictment, being offered before a publick Judicature, only to explain the Earl's Meaning, could not be interpreted a Leaſing-making with any ſeditious Intent; or infer any Crime, although he was miſtaken in his Opinion concerning the Act of Parliament; whether his Scruples were juſt, or groundleſs, they caſt no Reflection on the Act of Parliament: That, in the Explication, he did no where directly charge the Oath and Teſt with Inconſiſtency and Contradiction; this was made out only by Implication and Inference, and violently wreſting his Words: That his aſſerting, *The Parliament never intended to impoſe contradictory Oaths*, was an high Vindication of the Honour and Juſtice of the Parliament: And theſe Words, *He was ready to give Obedience as far as he could*, did not import, the Parliament had impoſed an unlawful Oath; but only ſhewed the Earl's Doubtfulneſs and Scrupuloſity in the Matter. As to thoſe Words, *I think Nobody can explain it but for himſelf*; they imported no more than, that every Man ought to take it in that Senſe he apprehended to be the genuine Senſe of the Parliament: And, as to his ſaying, *He takes it, as far as it is conſiſtent with itſelf, and the Proteſtant Religion*, he neither intended or expreſſed more than, that he took it as a true Proteſtant. As to that Expreſſion, *He does not bind up himſelf in a lawful Way, to endeavour any Alteration he thinks for the Advantage of Church or State*, he thought it could never be inferred from the Oath, but that Perſons might, notwithſtanding, concur in their Stations, *in a lawful Way*, in any Law, to the Advantage of Church and State; and, it would be contrary to his Allegiance, to take the

His Defence by Counſel.

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the Oath upon other Terms. And laſtly, by theſe Words, *this I underſtand as Part of my Oath*; he could not be ſaid to aſſume a Legiſlative Power: His plain Meaning was, that his Senſe and Explication was Part of his Oath, not of the Law which impoſed the Oath: And, upon the whole, infers, That the ſaid Explication cannot import all, or any of the Crimes libelled.

The King's Advocate's Anſwer to it.

His Majeſty's Advocate, in Anſwer to this Plea, ſaid, That to ſecure the Government againſt the Rebellious Principles of the laſt Age, and the unjuſt Pretext of this; and to ſecure the ProteſtantReligion, and the Crown, the King had called a Parliament, wherein this excellent Teſt was made, as a Security againſt the old juggling Principles of the COVENANT; wherein they ſtill ſwore to ſerve the King in their own Way. But the Earl, by his Paper, had diſcovered a Way to evade the Teſt, ſo as no Man ſhould be bound by it: For, if a Man ſhould ſwear to obey only as far as he could, and as far as he conceived it conſiſtent with the Proteſtant Religion, and with itſelf, and reſerved to himſelf a Power of making any Alteration he ſhould think conſiſtent with his Loyalty, what Man could be bound? The Government muſt be as inſecure as before theAct was made: TheTaker was no further obliged than he pleaſed; but every Man's Conſcience (which in this Age included Humour and Intereſt) muſt be the Rule of the Taker's Obedience.

It was the Opinion of all Lawyers and Divines, That every Oath was to be taken according to the Intention of him to whom it was made; nor was there any Danger to a tender Conſcience, in this Caſe, ſince there was no Force put upon the Earl: He took it to qualify him for a Place; and might have abſtained.

That the Earl was plainly guilty of contravening the Act of the 10th of *James* VI. which prohibited the writing of any Thing whereby his Majeſty's Government might be reproached, or his Proceedings miſconſtrued, ſo as to create a Diſlike between the King and his People. For, by ſaying, *He took the Oath only, as far as it was conſiſtent with itſelf, and the Proteſtant Religion*; it muſt neceſſarily be concluded, that in ſeveral Inſtances, it was inconſiſtent with itſelf, and the Proteſtant Religion; and nothing could be a greater Reproach to the Parliament, or a greater Ground of Miſlike among the People: And, whereas, it was ſaid, theſe were only Inferences; it was anſwered, There were ſome Offences, which the Law could only forbid in general; and there were many Inferences as ſtrong and natural, and which reproached more effectually than the plaineſt Defamations in the World. Direct Reproaches had not wounded the King ſo deep, as the many ſeditious Inſinuations of this Age and the laſt.

From the Earl's Paper it muſt be inferred, That the Parliament had made a very ridiculous Oath, inconſiſtent with itſelf, and the Proteſtant Religion: That was the natural Tendency of the Words; they would admit of no other Senſe. And ſhould a Man be permitted, under Pretence of exonerating his Conſcience, to defame the Government? Had they not ſeen the King moſt defamed by COVENANTS, entered into on pretence to make him A GREAT AND GLORIOUS KING? by Remonſtrances, on pretence of preſerving the ProteſtantReligion, and his ſacred Perſon? Thoſe of the laſt Age declared, *They thought themſelves bound in Duty to obey the King, as far as that could conſiſt with their Regard for the Proteſtant Religion, and their Laws and Liberties:* Which rendered all the reſt ineffectual.

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And, as it was Treaſon to endeavour any Alteration of the Government, either in Church or State, by a private Perſon; This the Earl was juſtly charged with: For he did not ſay, ſuch Alterations as the King ſhould think fit; or were conſiſtent with the Laws and Statutes of the Realm; but, *ſuch as he ſhould conceive to be lawful:* So that he was the ſole Judge, and his Loyalty to be the Standard. Nor did the Covenanters of the laſt Age, or the Rebels executed in this, deny they ought to obey the King: But they inſiſted, they ought to obey him no farther, than as his Commands were conſiſtent with the Laws of God and Nature, and with the COVENANT: And, when they were asked, Who ſhould be Judge of this? They ſtill made themſelves the Judges; and there lay the Treaſon. They ſeemed to tread in the Steps of their rebellious Progenitors; whoſe great Error was, that they thought themſelves, and not the King, Judges of what Reformation was wanting in Church and State.

Reply of the Earl's Counſel.

Sir *John Dalrymple*, another of the Earl's Advocates, replied, Where a Man was bound to take an Oath, if he gave in an Explication of the Senſe which he in his private Judgment apprehended to be the genuine Meaning; if his private Senſe did not agree with the Legiſlator's Senſe, then he that had Power to adminiſter the Oath, ought to reject him, as not fulfilling the Intent of the Law: But the Party could incur no other Penalty, than what was impoſed on the Refuſer; which, in this Caſe, was no more than the Loſs of his Office. It was admitted, that the aſſuming a Power to make Laws, was treaſonable; but though the Earl declared hisExplanation to be Part of his Oath, he never meant to impoſe it as Part of the Law.

As to thoſe Words, *I do not mean to bind up myſelf in my Station, and in a lawful Way to wiſh and endeavour any Alteration*, &c. This Clauſe was ſo far from being treaſonable, that every good Subject ought to ſay as much. The Words, *lawful Way*, ſhewed, that by Alterations could not be underſtood treaſonable Alterations; but ſuch Alterations as the Frailty of human Affairs and Conſtitutions, and the Viciſſitude of Things conſtantly require in the moſt complete Forms of Government.

It was a rational Proſpect; for, if every Thing were done, at preſent, that could be done for the Security of Religion, or Government, there might occur Caſes hereafter that might require new Remedies, and Alterations.

And what Affront was it to the Government, that the Parliament had impoſed an Oath

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Oath which the Earl was not able to take ſimply? He had not written or ſpoken againſt it; but only was not able to diſcern the Grounds on which it might be ſimply taken; which rather implied Want of Senſe, than any Crime: As to the laſt Words, *So far as it is conſiſtent*, &c. he meant no more, than that the Parliament did not deſign to impoſe Contradictions; and therefore ſaid, I take the Teſt as conſiſtent: And it muſt be conſiſtent, if the Parliament did not impoſe Contradictions; as certainly they did not.

King's Advocate rejoins.

The King's Advocate replying again upon the Earl's Counſel, ſaid, He was not to be puniſhed for refuſing, but for defaming the Oath: If he had ſimply refuſed it, the Government had been in no Hazard: But he would retain his Places, and take the Teſt in ſuch Words as gave the Government no Security: It was his defaming the Law, as ridiculous and inconſiſtent with the Proteſtant Religion, and creating Miſunderſtandings between the King and his People, that put the Earl in a worſe Condition than he that ſimply refuſed. Had the Earl only reſerved a Power of propoſing to his Majeſty any Alterations, or of concurring with his Majeſty in any Alterations, he might have done this very innocently; but giving himſelf that general Liberty, of *wiſhing and endeavouring any Alteration he ſhould think fit*, was the Crime: Nor, would the Word *lawful* make the Matter better; for the greateſt Rebel in *Scotland* would bind himſelf to a lawful Obedience, *provided he might be judge of the Lawfulneſs*. The Covenant itſelf had not only the Words above-cited; but they called the World to be the Witneſſes of their Loyalty and Sincerity.

As to riſing in Arms, or oppoſing a lawful Succeſſor, not a Covenanter in *Scotland* but would ſay, *He would not do either, but in a lawful Way; and in his Station; and as it was conſiſtent with his Loyalty:* But when they came to explain this, they would only do it as they thought fit: They would be Judges themſelves; declaring, that defenſive Arms were lawful; and, that no Prince ought to ſucceed to the Throne, unleſs he ſubſcribed the Covenant.

And whereas it was ſaid, the Earl did not deſign to add to the Law, but to his Oath only; he anſwered, Since the Oath was Part of the Law, adding to the Oath was adding to the Law.

The Court agree the Fact to be Treaſon. A Jury ſworn.

The Court ſuſtaining the Libel, or Indictment, as to the Treaſon, the Jury were ſworn, conſiſting of the *Marquis of* Montroſe, *(Foreman) the Earls of* Middleton, Airlie, Perth, Dalhouſie, Roxburgh, Dumfries, Linlithgow; *the Lords* Lindoors, Sinclair, Bruntiſland; *and the Lairds of* Goosford, Claverhouſe, Balnamoon, *and* Park-Gordon.

The Evidence.

The Witneſſes being called, depoſed, that they ſaw the Earl give in the aboveſaid Explanation of the Teſt in Writing, which he refuſed to ſubſcribe: And then the Aſſize, or Jury, withdrawing, to conſider of the Evidence, returned ſoon after, and unanimouſly (or with one Voice, according to the *Scots)*

The Earl convicted.

found the Earl GUILTY of the Crimes of Treaſon, Leaſing-making, and Leaſing-telling.

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The Sentence, however, being deferred till his Majeſty's Pleaſure was known; the Earl made his Eſcape in the mean Time, and went up to *London incognito*; and from thence into *Holland*; from whence returning to *Scotland* in a hoſtile Manner, in the next Reign, he was taken in the Field in actual Rebellion, and beheaded: For the Lords of Juſticiary had paſſed Sentence of High-Treaſon on him ſoon after he fled, *viz.* on the 23d of *December* 1681. And he was executed, in purſuance of that Sentence, on the 30th of *June*, 1685, at *Edinburgh*.

He makes his Eſcape.

Sentence paſſed on him in his Abſence.

Inſtead of any Remarks of my own, I ſhall entertain the Reader with the Account Doctor *Sprat*, late Biſhop of *Rocheſter*, gives of this Tranſaction, in his *Narrative of the* Rye-Houſe *Plot*; who ſays, "No ſooner was the "Parliament of *Scotland* adjourned, but the "Earl of *Argyle*, firſt at *Edinburgh*, next in "traverſing ſeveral Shires, made it his chief "Buſineſs to inſinuate every where, the moſt "malicious Prejudices imaginable, againſt "the whole Tenor of the Teſt; and, on "his Return to *Edinburgh* again, declared, "he would either not take it at all, or, with "a Reſerve of his own Explanation, which "he put in Writing, and diſperſed: The "Contrivance of it being ſuch, as diſſolved "all the Obligations of the Oath; and made "his own preſent Fancy, and private Opi-"nion, the only Standard whereby he meant "to be guided, in all the publick Duties of "his Loyalty and Allegiance.

Remarks on Lord Argyle's Trial, by Biſhop Sprat.

"At length, his Majeſty's High Commiſ-"ſioner, the Duke, and the Privy Council "of that Kingdom, having been well in-"formed of the Earl's ſeditious Carriage, in "City and Country, and being fully con-"firmed, in their Judgments and Conſci-"ences, of his traitorous Purpoſes, in that "fallacious and equivocating Paraphraſe on "the Teſt, which he owned in their Pre-"ſence, perverting thereby the ſound Senſe, "and eluding the Force of his Majeſty's "Laws, in order to ſet the Subjects looſe "from their Obedience; and to perpetuate "Schiſm in the Church, and Faction in the "State: Upon theſe Grounds he was de-"ſervedly proſecuted before the Sovereign "Juſtice Court; and, after a full and equal "Trial, found guilty of Treaſon by the "learned Judges, and a Jury, not only of "his Peers, but many of them his neareſt "Relations: And, although the King was "far from any Thought of taking away his "Life; and no farther Prejudice was deſign-"ed him, but the Forfeiture of ſome Juriſ-"dictions, and Superiorities, which he and "his Predeceſſors had ſurreptitiouſly acquired, "and moſt tyrannically exerciſed; beſide the "Diſpoſal of Part of his Eſtate to pay his Cre-"ditors, and ſome few Donatives to thoſe he "and his Father had formerly ruined for their "Fidelity to his Majeſty; the Surpluſage "was deſigned to return and deſcend to his "Family: But the Earl, abuſing the great "Freedom that was indulged him in Priſon, "which he enjoyed as largely after Convicti-

A Jury of Aliens and Denizens.

The Evidence againſt the Principals.

"on

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" on as before, fled from his Majeſty's Mercy; the Knowledge of his Guilt not ſuffering him to venture on that Clemency, whereof he had participated ſo plentifully, when he was under a former Sentence of High Treaſon.

" The King, however, notwithſtanding this new Provocation, ſtill retained the ſame benign Thoughts of favouring his Wife and Children; and, before it was known that the ſaid Earl had more Debts on his Eſtate than the full Value amounted to (which really was his Caſe), his Majeſty was pleaſed to give three Times as much of the Inheritance to his Poſterity, as his Father could lawfully have done, if it had never been forfeited.

" But how ill he deſerved or requited ſo many Acts of Grace and Bounty, appeared by his future Conduct, after his Eſcape: For, inſtead of doing what his Accomplices and Dependants gave out he intended, *viz.* That he would humbly caſt himſelf at his Majeſty's Feet, and implore his Pardon; he was no where to be found, but aſſociating with his Majeſty's implacable Enemies: In the Head of new treaſonable Conſpiracies: Employing his Liberty Abroad, in maintaining traitorous Correſpondencies at Home: With reſtleſs Malice exciting the Malcontents, of both Kingdoms, to a fatal Union againſt the Life, Government, and Family of his Sovereign and Benefactor.

" All which might be proved againſt him by Arguments as clear as the Sun; by his own authentick Letters; and by the Depoſitions of his principal Agents. *(The fatal Effects whereof, to himſelf, have been already mentioned).*"

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Coningſmark's *Trial.*

The Trial of CHARLES-GEORGE BOROSKI, CHRISTOPHER VRATZ, JOHN STERN, and CHARLES-JOHN Count CONINGSMARK, for *Murder*, at the *Old Baily*, *London*, *Feb.* the 28th, 1681. 34 *Car.* II.

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The Indictment.

THE Indictment charged the three firſt, with making an Aſſault on *Thomas Thynn*, Eſq; on the 12th of that Inſtant *February*, when the ſaid *Boroski* ſhot the ſaid *Thynn* with a Blunderbuſs, loaded with four Bullets, giving him thereby four mortal Wounds in his Body, of which he languiſhed till the 13th Inſtant, and then died; and the ſaid Count was charged, with procuring the ſaid three Perſons to commit the ſaid Murder.

A Jury of Aliens and Denizens.

The Priſoners, being all Foreigners, were tried by a Jury, half *Engliſh* and half Foreigners; and the Indictment and Evidence interpreted to them.

The Evidence againſt the Principals.

The Evidence being called, *William Cole*, Mr. *Thynn*'s Footman, was ſworn, and depoſed, That as his Maſter was riding in his Coach from the Counteſs of *Northumberland*'s, on *Sunday*, about eight in the Evening, being the 11th or 12th of this Inſtant *February*, he (the Deponent ran before the Coach with a Flambeaux in his Hand; and, at the lower End of *St. Alban*'s-*Street*, hearing a Blunderbuſs go off, he looked back, and ſaw a great Smoak; and heard his Maſter, Mr. *Thynn*, cry out, he was murdered; and ſeeing three Horſemen riding away from the Right Side of the Coach, he (the Deponent) purſued them, crying out Murder, to the upper End of the *Hay-market*.

William Ellers, Mr. *Thynn*'s Coachman, depoſed, That driving his Maſter from the Lady *Northumberland*'s, in St. *James*'s-*ſtreet*, three Men came riding by the Right Side of the Coach, at the End of St. *Alban*'s-*ſtreet*, and one of them turned about, and ſaid, Stop you Dog: And as the Deponent was looking about, the Fire was let into the Coach, upon his Maſter; and the Men ran away.

Hobbs, the Surgeon, depoſed, He was ſent for to Mr. *Thynn*, about nine on *Sunday* the 12th of *February* in the Evening, and found him ſhot with four Bullets, which entered his Body, tore his Gutts, wounded his Liver, Stomach, and Gall, broke one of his Ribs, and the great Bone below; and that he died of thoſe Wounds, every one of them, as he believed, being mortal.

The Coroner alſo depoſed, That he ſat on the Body of Mr. *Thynn*, and found it wounded with Bullets, as the Surgeon had ſworn.

The three Principals confeſs the Fact.

This Evidence being interpreted to the Priſoners, *Boroski* ſaid, he could not tell how many Bullets were in the Blunderbuſs; he did not charge it, though he fired it; he received it from Capt. *Vratz*.

Vratz acknowledged his giving the Blunderbuſs to *Boroski*, and *Stern* confeſſed he bought it by the Order of *Vratz:* That they both aſſiſted in loading it, and were preſent when *Boroski* fired at Mr. *Thynn*.

Vratz being asked, What Affront Mr. *Thynn* had given him; he ſaid, He heard he had ſpoken ſcandalouſly of the Count, who was his Friend, and a Man he had many Obligations to; and therefore he *(Vratz)* took the Quarrel upon himſelf, and challenged Mr. *Thynn* to fight, which he refuſed ſeveral Times; whereupon he *(Vratz)* took the other two Men with him, to oblige him to fight; and to make his Eſcape afterwards: He confeſſed alſo, he ſtopped the Coach; but ſaid, *Boroski* fired by Miſtake; for he bid him not fire, unleſs he ſhould be hindered from fighting, or making his Eſcape.

Boroski, on the other hand, ſaid, *Vratz* ordered him to fire, as ſoon as he ſtopped the Coach.

Stern confeſſed *Vratz* told him, he had a Quarrel with a Gentleman, and if he would aſſiſt him, he would make his Fortune: That the Captain told him alſo, he would give him two or three hundred Crowns, to find a Man

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The Evidence againſt the Count.

that would kill Mr. *Thynn*; and before *Boroski* came over, the Captain deſired him to get an *Italian* to ſtab a Man.

Then the Witneſſes againſt Count *Coningſmark* were called: And firſt *Hanſon*, Tutor to the young Count, depoſed, That the Count (the Priſoner) came into *England* about a Month before, and lodged firſt at a Corner-Houſe in the *Hay-Market*; where he ſtaid a Week, keeping his Chamber all the Time: Nor was he known to the Family where he lodged; but went by the Name of *The Stranger:* That he took a ſecond Lodging, two or three Streets from the former, where he ſtaid but two Days, becauſe the Chimnies ſmoked; and removed from thence to St. *Martin's-Lane*, where he kept himſelf private, as in his other Lodgings: That he ſaw Captain *Vratz* at the Count's Lodgings ſometimes, who came into *England* with him.

The Counſel demanding, If he did not carry a Meſſage from the Count, to the *Swediſh* Envoy? *Hanſon* anſwered, No direct Meſſage: But the Count having told him, he heard Eſq; *Thynn* had ſpoken abuſively of him, he would fain know, what would be the Conſequence, if he ſhould call him to an Account; and ſeemed deſirous to have the Opinion of the *Swediſh* Envoy; whereupon he, (the Deponent) mentioned it to the *Swediſh* Envoy; who anſwered, If the Count meddled with Mr. *Thynn*, he would have but bad Living in *England*; but what the Law was, in that Caſe, he could not ſay.

The Counſel then asked him, If there was any Thing in that Meſſage, about marrying my Lady *Ogle: Hanſon* anſwered, The Count enquired, If he ſhould call Mr. *Thynn* to an Account, and have an Advantage of him; whether the Laws of *England* would be any Bar to his Pretenſions on my Lady *Ogle*.

Then the Counſel asked *Hanſon*, when he ſaw *Boroski* firſt? He anſwered, He came to him at the *French* Academy, to enquire for Count *Coningſmark*, the *Friday* before the Accident happened: That the Count expected him ſometime before, and thought he had been caſt away in a Storm: He ſaid, he was an able Man, and underſtood Horſes; and he had a Mind to buy *Engliſh* Horſes, and deſigned this *Boroski*, the *Polander*, ſhould look after them, and dreſs them after the *German* Way. -----That *Boroski* came to the Deponent again the next Day, being *Saturday*, and he went with him to the Count's Lodgings; who asking him where he had been, *Boroski* anſwered, He had been toſſed about upon the Sea; and the Deponent left him at the Count's Lodgings.

The Counſel demanded, What Directions he had about providing *Boroski* with a Sword? *Hanſon* anſwered, He had Directions the ſame Day, to get him a great Coat and a Sword; and he provided them accordingly.

John Wright being ſworn, the Counſel asked him, When *Boroski* the *Polander* came to *England?* He anſwered, On *Friday*, the Tenth of this Month; and that he went with him to the young Count (Brother of the Priſoner)'s Lodgings at the Academy, where *Boroski* delivered a Letter to Mr. *Hanſon*; and he was ordered to have the *Polander* thither again next Morning, which he did, and never ſaw him afterwards. 1681. 34 Car. II.

Dr. *Frederick Harder* being ſworn, depoſed, That Captain *Vratz* lived with Count *Coningſmark*, and came over to *England* with him; and that, about a Month ago, *Vratz* came to the Deponent, and told him, The Count wanted to ſpeak with him; and he went to him at his firſt Lodgings, the Corner of the *Hay-Market*. The Counſel demanding, if the Count went by his own Name, or was in a Diſguiſe; the Doctor anſwered, He deſired to be private, becauſe he was taking Medicines, and would not have it known: He deſired therefore, to be called by the Name of *Carlo Cuski*; and as for a Diſguiſe, he had a black Wig on. *(I think the Count uſually wore his own Hair.)*

Several Witneſſes depoſed, That the Count lived privately in his Lodgings: That Captain *Vratz* lodged with him ſometimes; and Dr. *Harder* uſed to viſit him.

Watts, a Boy, depoſed, That he came to live with the Count ten Days before the Death of Mr. *Thynn:* And that *Sunday* Evening the Fact was done, Captain *Vratz* came to his Lord's Lodgings, as he was waiting below Stairs, and did not come down again, before he, (the Deponent) went Home, for he lay at his Father's.

That the *Polander* was at his Lord's Lodgings, on *Saturday* before the Murder, and dined with the other Servants; and on *Sunday* a Sword was delivered to him, and he went away that Morning, with a Pair of Boots and the Sword under his Arm, having a new Coat on; and it appeared, the *Polander* had a Buff Coat under his Great Coat.

Watts the Boy farther depoſed, That he came to his Lord's Lodgings, the *Monday* Morning after Mr. *Thynn* was killed, and he was packing up his Things; and his Father, who was a Porter, carried away two Portmanteaus for him; and that the Count had a black Peruke on, when he went away.

Watts, the Father, depoſed, That he carried two Portmanteaus to the *Windſor* Coach for the Count, about nine on *Monday* Morning, being the Day after Mr. *Thynn* was killed.

Raynes a *Swede*, depoſed, That the Count lay at his Houſe at *Redriff*, from the *Monday* after Mr. *Thynn* was killed, to the *Thurſday* following; when he was carried by a Skuller to *Deptford*, the next Day to *Greenwich*, and the Day after to *Graveſend*.

Then two of the King's Meſſengers were ſworn, who depoſed, That they took the Count as he was landing at *Graveſend*, the *Sunday* after the Murder; and that, when they ſeized him, he gave a ſudden Start, and his Wig fell off: That they carried him before the Mayor of *Graveſend*, and afterwards to an Inn in the Town; where he ſhewed himſelf under great Concern, when he was told, the Captain and the *Polander* had confeſſed ſome Particulars; and ſaid, It was a Stain upon his Blood; but one good Action in

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The Counts Defence.

in the Wars, or lodging on a Counterſcarp, would waſh all that away.

Count *Coningsmark* ſaid in his Defence, That he came into *England* with a Deſign to raiſe a Regiment to ſerve the King againſt the *French:* That he had already ſerved the King at *Tangier*, when this *Polander* attended him, and that he deſigned, at that Time, to bring him to *England*, to dreſs his Horſes after the *German* Way; and had actually ſent over a thouſand Piſtoles to buy Horſes which the young Count atteſted.

That he had a Diſtemper broke out in his Arms and Breaſt, which obliged him to live privately, till he was cured: And beſides, his Equipage was not come over, and he could not appear like a Man of Quality, till it arrived.

That he never had any Quarrel with Mr. *Thynn*; or ever ſaw him, to the beſt of his Remembrance: That he provided the *Polander* with a Coat, becauſe he was in Rags; and the broad Sword was no more than what Servants of his Bulk and make uſually wore: And for his Buff Coat, he had it before.

That the Reaſon he withdrew, was, becauſe he was afraid the People would pull him to Pieces; they ſeeming to ſuſpect he was concerned in the Fact.

Obſervations of the Counſel on the Evidence.

Sir *Francis Winnington* then made his Obſervations on the Evidence for the King, and ſaid; As to the Principals, they had confeſſed the Fact: But could any rational Man believe, from the Account they gave themſelves, that they had any Delight in killing that innocent Gentleman? There muſt be ſome other Reaſon for committing that barbarous Murder: And the Count was a very unhappy Man to have ſuch a Relation to the Principals; two of whom, *Vratz* and the *Polander*, were of his Lordſhip's Family; and *Vratz* was with him on that very Evening the Fact was committed, even after it was done. And it made it the more ſuſpicious, that the Count ſhould provide *Boroski* with a Sword and Boots that very *Sunday* Morning he murdered Mr. *Thynn*; and that the *Polander* ſhould go from the Count's Lodgings with a Buff Coat under his Great Coat, and never return till the Fact was committed.

The Court and the Jury might obſerve what a kind of Creature *Boroski* was; how likely to do any thing of that kind, being at the Command of ſo great a Perſon. It was obſervable alſo, the Witneſſes were moſt of them the Count's Friends, unwilling to declare the Truth, till it was with Difficulty drawn from them: And where ſhould a Man go for the Original of this Buſineſs? Could any one think it was contrived by the three Principals? To what End or Purpoſe? What Advantage could it be to them? He muſt ſay, he knew no where to go for the Author of this villainous Fact; nor whom to accuſe as the prime Contriver of it, but the Count. *At which the People ſhouted.*

Mr. *Williams* alſo made his Obſervations on the Evidence; and, beſides the Remarks made by Sir *Francis*, took Notice, That *Hanſon*, his Brother's Tutor, acknowledged that the Count talked of requiring Satisfaction of Mr. *Thynn* on the Lady *Ogle*'s Account; and enquired what might be the Conſequence of it: Nor had the Count given any rational Anſwer as to his lurking and hiding himſelf, ever ſince he came to *England*. He pretended, indeed, to labour under a Diſtemper which he would not have diſcovered; and yet, the next Morning after the Fact was done, he valued neither Diſeaſe nor Phyſick, but went by Water, and attempted to fly beyond Sea. And could any Man believe, when *Vratz* came over with him, lodged with him, and was every Day in familiar Converſation with him; and came the Morning before, and in the Evening immediately after the Murder, and ſtaid with the Count a conſiderable Time; that his Lordſhip could be perfectly innocent? Would not any Man conclude him acceſſary to the Murder? And as to his pretended Fear of the People to excuſe his Flight, he knew he might, without Danger have ſurrendered himſelf to a Magiſtrate, and been protected, if he had been innocent.

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Directions of the Chief Juſtice to the Jury.

The Chief Juſtice then gave his Directions to the Jury; and obſerved, That where one Man ſhoots another, and two are with him, who came on Purpoſe to countenance the Fact, it was Murder in them all. That *Vratz* and *Stern* acknowledged themſelves to be at the Murder; but ſaid they only came to fight a Duel with Mr. *Thynn:* For *Vratz* made that Excuſe, *That he intended to kill him fairly*; and the other two were to ſtand by to ſee him make the beſt of it. So that they all came with a murderous Intent, and a Murder followed, and conſequently the three Principals were all guilty of Murder.

As to Count *Coningsmark*, the Queſtion was, Whether he commanded, or gave any Direction, to have the Murder committed? for without that he could not be an Acceſſary.

If a Gentleman has an Affront given him, which he ſeems to reſent; and any of his Servants officiouſly, without acquainting him with it, will go and kill the Perſon they apprehend has affronted their Maſter, without his Knowledge, he is not guilty: And if they believe he did not know of it, till after it was done they muſt acquit him.

The Principals convicted.

The Count acquitted.

Whereupon the Jury, after half an Hour's Receſs, brought in the three Principals GUILTY; But acquitted the Count, who was ordered, however, to enter into a Recognizance with three Sureties, to appear the next Seſſions, and anſwer any Appeal that might be brought by Mr. *Thynn*'s Relations.

The Principals condemned, and executed.

The other three being brought to the Bar again, and asked what they had to ſay why Sentence of Death ſhould not be paſſed upon them; *Vratz* inſiſted, he had not had a fair Trial: And *Stern* ſaid, it was for Captain *Vratz*'s Sake he was concerned in the Fact. And as to *Boroski*, he did not pretend to make any Apology for the Murder, looking upon himſelf to be under an Obligation of obeying his Superiors without reſerve. Whereupon Sentence of Death was pronounced upon the Principals by the Recorder, the Judges being gone off the Bench, they were all three hanged

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hanged in *Pall-Mall*, the tenth of *March* following: And *Boroski*, who fired the Blunderbuſs, was afterwards hanged in Chains near *Mile-End*.

Remarks

As Mr. *Thynn* was looked upon to be of Lord *Shaftesbury*'s Party, they gave out, at firſt, that this was another Branch of the Popiſh Plot, and that a general Maſſacre was ſtill to be expected from the Papiſt: But the Matter ſoon appeared to be no more than a Love-Affair; and that Mr. *Thynn* had been murdered by ſome of the Servants or Dependants of Count *Coningsmark*, who had been his Rival when he courted the Lady *Ogle*, of which Mr. *Echard* gives us the following Account, *(viz.)*

Joſceline late Earl of *Northumberland*, of the Family of *Percy*, dying in the Year 1670. left no Iſſue but the Lady *Elizabeth*, his Daughter and ſole Heir (at the time of his Death, about four Years of Age) who being a great Fortune, was, in her Minority, married to *Henry* Earl of *Ogle*, Son and Heir to the Duke of *Newcaſtle*; who dying ſoon after, left her a Virgin Widow. After which many People of the firſt Quality made their Addreſſes to her; and among the reſt Count *Connigsmark*, whoſe Pretenſions, it is ſaid, were countenanced by the King: But the young Lady, by her Grandmother's Contrivance, was married privately, the Summer before this Accident happened, to Mr. *Thynn*, a Gentleman of ten thouſand Pound a Year Eſtate; who had been a Member of ſeveral Parliaments, and made ſome Figure both within the Houſe, and out of it: But, whether the Lady herſelf did not approve of the Match, or was put upon it by others, ſhe privately went over to *Holland* in *Michaelmas Term*, 1681, before Mr. *Thynn* had ever been in a Bed with her.

Whereupon it was ſaid a Suit would be commenced, concerning the Validity of the Marriage; and that the beſt Civillians were retained in the Cauſe, on one ſide or other. And in the mean time Count *Coningsmark* came over *incognito* into *England* (as appears by the preceding Trial) and Mr. *Thynn* was murdered by his Servants, in the Manner above related, about a Month after his Arrival: And the King ordered the Ports to be ſtopped, and ſtrict Search made for the Murderers, the three Principals were traced to their reſpective Lodgings, and apprehended there; and ſix Days after the Count was taken at *Graveſend*; and they were all tried, in the manner above related. 1681. 34 Car. II.

The Hiſtorian adds, That *Stern* and the *Polander* died very penitent, though their Notion had for ſome time been, That Obedience to the Orders of their Superiors would clear any Man from Guilt: But Capt. *Vratz* ſeemed to continue in his firſt Opinion, that God had a greater regard to Gentlemen than to require Punctilio's of Humiliation at their hands: And that it was Abſurd to think, that ſo many thouſand Gentlemen in the World, who ſtood upon their Honour and Reputation as well as he, ſhould be for ever damned, becauſe they could not ſtoop to Things that would ſpoil the Figure they made.

Some however, according to this Hiſtorian, who deals pretty much in Judgments, looked upon this Misfortune as a Judgment on Mr. *Thynn*, for his treacherous Behaviour to another Lady, remarkable for her Modeſty and Virtue, who had bravely reſiſted the Duke of *Monmouth*'s Attacks, as being a married Man. Whereupon the Duke, to revenge this Diſappointment, applied himſelf to Mr. *Thynn* to effect what he himſelf deſpaired of accompliſhing; and *Thynn* found Means, under Pretence of making honourable Love to the Lady, to debauch her, and then ſhamefully abandoned her; which was reflected on after his Death: And it became a common Saying, *If he had married the Lady he had bedded; or bedded the Lady he had married, he had never come to that untimely end.* As to the Lady *Ogle*, ſhe was afterwards married to the Duke of *Somerſet*; and ſoon ſhewed the World (ſays the ſame Author) that her Worth and Reputation was above all Blemiſh.

1682. 34 Car. II.

The Trial of NATHANIEL THOMPSON, WILLIAM PAIN, and JOHN FARWELL, for printing and publiſhing ſeveral Libels, *June* 20, 1682. 34 *Car.* II.

1682. 34 Car. II.

The Trial of Thompſon, *&c.*

The Charge.

THE Attorney-General preferred an Information againſt them, wherein he ſet forth, That the Defendants, to reflect on the Juſtice of the Nation, and ſcandalize the Witneſſes who gave Evidence at the Trial of *Green*, *Berry*, and *Hill*, of *Godfrey*'s Murder, had written and printed ſeveral ſcandalous Libels; one whereof was entitled, *A Letter to* Miles Prance, *concerning the Murder of Sir* Edmunbury Godfrey: Wherein it was ſuggeſted, That the ſaid *Godfrey* was *Felo de ſe*, and did reflect on the Witneſſes and the Coroner, as though he had bribed the Jury. And that in another Libel, printed by *Thompſon*, called his *Proteſtant Intelligence*, he ſaid, He could make it out, by a Cloud of Witneſſes, that *Godfrey* murdered himſelf; whereby they had defamed the Juſtice of the Nation, *&c.*

Confeſſed.

The Defendants confeſſing themſelves guilty of the Charge, and ſubmittnig to the Mercy of the Court,

Sentenced to be pilloried, and fined.

Thompſon and *Farwell* were ſentenced to ſtand in the Pillory in the *Palace-Yard*, and to pay each of them a Fine of One hundred Pounds: And *Pain* was only adjudged to pay a Fine of One hundred Pounds, and to be impriſoned till paid.

The

1682. 34 Car. II. *Lord* Grey's *Trial.*

The Trial of FORD Lord GREY of *Werk*, ROBERT CHARNOCK, ANNE CHARNOCK, DAVID JONES, FRANCES JONES, and REBECCA JONES, for certain *Miſdemeanors* at the Bar of the Court of *King*'s-*Bench*, *November* 23, 1682. 34 *Car.* II.

1682. 34 Car. II.

The Charge. AN Information was brought againſt the Defendants, in the Name of the Attorney-General, Sir *Robert Sawyer*, ſetting forth, That the Defendants, the 20th of *Auguſt* then laſt paſt, at *Epſom*, in the County of *Surrey*, did conſpire the Ruin and Deſtruction of the Lady *Henrietta Berkeley*, Daughter of the Right Honourable *George* Earl of *Berkeley*, and to that End did ſeduce her from her Father's Houſe, being then under the Age of 18 Years, and in the Cuſtody and Government of her ſaid Father; ſoliciting her to commit Whoredom and Adultery with the ſaid Lord *Grey*, who was before married to the Lady *Mary*, her Siſter: And that, after they had carried the ſaid Lady *Henrietta* from her Father's, they obſcured her in ſecret Places, ſhifting her from Place to Place, and continued that Courſe of Life ever ſince; to the Ruin of the young Lady, and Grief of her Friends.

The Evidence. The Witneſſes being called, the Lady *Arabella Berkeley* depoſed, That ſhe intercepted a Letter from her Siſter *Harriet*, to the Lord *Grey*; wherein ſhe ſaid, *My Siſter* Bell *did not ſuſpect our being together laſt Night, for ſhe did not hear the Noiſe. Pray come again on* Sunday, *or* Monday: *If the laſt, I ſhall be very impatient.* That my Lord *Grey* afterwards, told the Deponent, He had no Love, no Conſideration for any Thing upon Earth, but for the dear Lady *Henrietta:* And that he would be revenged on all the Family, if they expoſed her.

The Lady *Berkeley* depoſed, That when ſhe firſt diſcovered the Lord *Grey*, her Son-in-Law, was in Love with his Siſter, ſhe ſent to ſpeak with him; and told him, he had done baſely and treacherouſly, in holding an Intrigue of Criminal Love with his Siſter: He had better have murdered her. To which he anſwered, He confeſſed he had been falſe and baſe; but deſired her to conſider (and then ſhed abundance of Tears) what it was that made him guilty: And ſhe demanding, Whether he was, indeed, in Love with his Siſter-in-Law? He fell a weeping again, and ſaid he was unfortunate; and if ſhe told my Lord, her Father, and his Wife of it, it might make him deſperate, and put ſuch Thoughts into his Wife's Head, as might occaſion their parting; and he being deſperate, he knew not what he might do; he might neither conſider Family or Relation. She replying, this would make him look very black in Story, he ſaid, That was true; but he could not help it: He was miſerable; and if ſhe knew how miſerable, ſhe would pity him; and was very importunate ſhe would keep it ſecret.

That when ſhe acquainted her Daughter *Harriet*, that my Lord *Grey* had confeſſed the Intrigue, ſhe fell into Tears, begged Pardon for what ſhe had done, and promiſed never to have any Converſation with her Brother-in-Law any more; but Lord *Grey* coming down to *Durdans*, my Lord *Berkeley*'s Houſe in *Surrey*, afterwards, on Pretence of a Viſit, and going away again on *Saturday* in the Afternoon, her Daughter ran away after him the ſucceeding Night.

Then ſeveral Witneſſes proved, That *Charnock* and his Wife aſſiſted the Lady *Harriet* in her Flight, and took Lodgings for her, *&c.* That ſhe lodged at *Jones*'s at *Charing-Croſs*; and was attended and taken care of by *Jones* and his Wife: And that my Lord *Grey* came to viſit the Lady *Harriet* there, and at other Lodgings, in a Diſguiſe.

Mr. *Craven* depoſed, That my Lord *Grey* ſaid, he would acquaint him with the whole Intrigue between him and the Lady *Harriet* (as they were a Shooting), and acknowledged he had a great Affection for her, ever ſince ſhe was a Child: That when he firſt wrote to her about it, ſhe was very angry, and threatned to diſcloſe it to her Father and Mother: But one Day, when they were walking together, ſhe took his (Lord *Grey*'s) Hand, and ſqueezed it to her Breaſt, which was the firſt time he perceived ſhe loved him; and from that Time, for a Twelvemonth before ſhe went away, he ſaw her almoſt every Night: Though my Lady *Berkeley* put a *French* Woman to lie with her, yet ſhe roſe from the *French* Woman, and came to him. That it was not to be imagined what he ſuffered, to come into her Company: He had been two Days locked up in her Cloſet, without Meat or Drink, but only ſome Sweetmeats. That he had done all he could to divert his Paſſion, and would fain have avoided the bringing ſo much Infamy on his Family and his Lady's. He endeavoured to cool his Flame, by making Love to two other Ladies, whom he courted and enjoyed; but all ſignified nothing, he could not ſubdue it. And when the Deponent ſuggeſted the Danger he might be in from the Law; he ſaid, he had conſidered of that, and they could not do any thing againſt him for it, if they examined the Caſe of Mrs. *Heneage* and Lord *Cavendiſh*. He ſaid he could not perſuade her, and he would not betray her; he owned he had her in his Power; but he would not part with her never to ſee her again.

Lord *Cavendiſh* being in Court, ſaid, Mr. *Graven* had very impertinently mentioned his Name; and deſired to know, Why his Name was mentioned any more than the two Ladies? *Graven* replied, My Lord *Grey* did not mention the two Ladies Names to him.

Lord *Grey* thereupon ſaid, No, nor Lord *Cavendiſh*'s neither: It was all a Lie; and deſired he might ſpeak for himſelf. He proceeded, and ſaid, No Man ever lay under a more infamous Accuſation: His Honour was at Stake; and if his Life was ſo too, he ſhould not be more concerned to ſave it, than he was to clear his Reputation. Was he guilty of the

1682. 34 Car. II.

Villainy laid to his Charge, he needed no other Puniſhment; he was ſure he could not have a worſe than the Reflection of his own Conſcience for it; and he ought to be baniſhed the Society of Mankind. He confeſſed he was ſo unhappy as to have a very great Kindneſs for the unfortunate Lady, though not a Criminal one, as the Witneſſes would have it believed. He proteſted he was no way aſſiſting to her Eſcape or privy to it: Nor had he ever detained her from her Father, though he had ſuffered a Fortnight's cloſe Confinement for it. That one Day, when he was at a Coffee-houſe in *Covent-Garden*, indeed, the young Lady called in a Coach at the Door, and ſent for him; and when he came to the Coach ſide, ſhe gave him a tedious Hiſtory of her ill Uſage at home, which made her come away. He obſerved, That he acquainted his Lordſhip (the Chief Juſtice) when the Warrants were out to ſearch for her, that ſhe ſought only for Protection, and was willing to return home, if ſhe might be ſecured ſhe ſhould not be ill treated again: And then, when his Lordſhip ſaid, he (Lord *Grey*) could not protect her againſt her Father; he anſwered, She was not in his Houſe, or in his Cuſtody; and his only Crime was, that he knew where ſhe was: And if he deſerved Puniſhment for keeping his Word and Faith with her, which he gave her upon her Importunity in a Letter, *That he would not betray her*, he muſt ſubmit to it, he could not do otherwiſe in Honour.

Lady Harriet *herſelf allowed to give Evidence.*

The Lady *Harriet* herſelf, being ſworn, at the Deſire of Lord *Grey*'s Counſel, depoſed, That my Lord *Grey* had no Hand in her Eſcape; ſhe had no advice from him, or any Body about him, to go away; nor did he ſo much as know of it: Nor did ſhe ſee Lord *Grey* till a great while after ſhe went from her Father's; the firſt time was in a Hackney-Coach, at a Coffee-houſe Door in *Covent-Garden:* Nor did any of thoſe mentioned in the Information, aſſiſt her to eſcape from *Durdans*.

The Chief Juſtices's Reflections on her.

Then ſhe deſired to clear her Reputation, and tell the Reaſon of her coming away from her Father's: But the Chief Juſtice ſaid, he ſaw no Reaſon to indulge her ſo far, unleſs ſhe had appeared more ingenuous in her Evidence. She had injured her own Reputation, and proſtituted her Body and her Honour, and was not to be believed. *(For ſeveral Witneſſes had proved that* Charnock *aſſiſted her in her Eſcape: That he and his Wife took Lodgings for her; and that ſhe lodged at* Jones's *at* Charing-Croſs, *where the Lord* Grey *came to ſee her in Diſguiſe.)*

He directs the Jury.

The Lord Chief Juſtice proceeding to give his Directions to the Jury, ſaid, The Queſtion before you is, Whether there was any ſuch unlawful Solicitation of this Lady's Love, as is laid in the Information? And whether ſhe was inveigled to withdraw herſelf, and run away from her Father's Houſe? And whether my Lord *Grey* did frequent her Company afterwards? The Evidence that has been given you is very plain, if you believe thoſe Witneſſes that ſpeak from my Lord's own Mouth; That he hath a long time ſolicited her to unlawful Luſt: There is nothing elſe in it, Gentlemen (that is the plain *Engliſh* of it all) He has enticed her to unlawful Luſt: And the Queſtion is, Whether my Lord *Grey* had any Hand in carrying her away? As to that, it is pretty manifeſt, that his Coachman *Charnock* did carry her away, who was in his Company that Night, and pretended to go to *Up-Park* with his Lord; but was ſeen in *London* next Morning at Nine o'Clock: There is full Evidence of the Guilt of *Charnock* and his Wife, who were the Solicitors in this Buſineſs, and took Lodgings for her. *Jones* and his Wife are as guilty as the reſt, who contrived to keep her ſecret, eſpecially after *Jones* had promiſed Captain *Fitzgerrald* to let him ſee her: And whether Lord *Grey* was not as guilty as *Charnock*, or any of the reſt; nay, indeed, the chief Mover of this ill thing, they were to conſider. If they believed the Evidence for the King, moſt certainly they were all guilty of the Charge, unleſs *Rebecca Jones*, againſt whom there is no Evidence.

1682. 34 Car. II.

Earl of Berkeley *demands his Daughter.*

The Jury being about to withdraw, the Lord *Berkeley* deſired he might have his Daughter again: And the Chief Juſtice ſaid he muſt have her: But ſhe ſaid ſhe would not go to her Father; ſhe was married to one Mr. *Turner*, Son to Sir *William Turner*, the Advocate, who was there in Court: And thereupon Mr. *Turner* declared he was married to her. Serjeant *Jeffries* then repreſented, That this was all a Trick, and one of the fouleſt Practices that ever was uſed: They could prove that Mr. *Turner* was married to another Perſon before, who was ſtill alive, and had Children by her. Mr. *Turner* denying this, Serjeant *Jeffries* demanded, If he did not live at *Bromley* with a Woman as her Husband, and had Children by her; and being queſtioned for it, they did not own themſelves to be Man and Wife? *Turner* again denied it, and averred, that the Lady *Harriet* was his Wife; and he had Witneſſes in Court to prove it.

She declares ſhe is married.

The Lord *Berkeley* anſwered, This Court had not the Cognizance of Marriages; they would not determine that, how ready ſoever he was to make it out by Witneſſes; and deſired his Daughter to be delivered to him, and they might take their Remedy.

The Chief Juſtice ſaid, He ſaw no Reaſon why Lord *Berkeley* might not take his Daughter: But Judge *Dolben* anſwered, They could not diſpoſe of another Man's Wife: They ſaid they were married, and the Court had nothing to do with it.

The Lady *Harriet* inſiſting ſtill ſhe would go with her Husband, the Earl of *Berkeley* ſaid, Huſwife, you ſhall go with me; and deſired again he might have his Daughter. The Chief Juſtice ſaid, they did not hinder him; he might take her: But ſhe anſwering ſhe would go with her Husband, the Earl ſaid, *Then all that are my Friends ſeize her, I charge you:* And there was a great Scuffle about the Lady, and Swords drawn in the Hall: Whereupon the Lord Chief Juſtice coming by, ordered his Tipſtaff to take the Lady *Harriet* into Cuſtody, and carry her to the *King*'s-*Bench*: And *Turner* deſiring to be committed with her, they were both carried over to the *King*'s-*Bench*

A great Conteſt about the Lady, in the Hall.

She and her pretended Husband ſent to the King's Bench.

1682. 34 Car. II.

Bench Priſon. It was reported, *Turner* lay with the Lady that Night at the Marſhal's Houſe; but ſhe was releaſed out of Priſon by Order of the Court, the laſt Day of the Term.

The Lord *Grey*'s Counſel moving the Court that his Lordſhip might be diſcharged from his Confinement, now the Lady was produced,

The Attorney-General anſwered, They deſired the Lord *Grey* might be forth-coming, in Caſe he ſhould be convicted, to receive the Judgment of the Court.

Mr. Juſtice *Dolben* ſaid, The King's Counſel did not do well, to preſs them to do what could not be done: They had, perhaps, gone further than ordinary in committing him, as he was a Peer; but they did it to reſtore the young Lady to her Liberty: And now ſhe appeared, and ſaid ſhe was under no Reſtraint, they could do no more. She was properly the Plaintiff in the Writ *de Homine replegiando*, which had been brought; and they could not now detain his Lordſhip in Cuſtody: Whereupon the Lord *Grey* was admitted to Bail, at the Suit of the Lady *Henrietta Berkeley*.

1682. 34 Car. II.

Lord Grey *admitted to Bail.*

The Jury having given a private Verdict over Night, (*viz.*) *That all the Defendants were guilty except* Rebecca Jones, *whom they acquitted*, confirmed their Verdict in open Court the next Morning. But the Matter being amicably compromiſed the next Vacation, no Judgment was ever prayed, or given, againſt any of the Defendants.

Lord Grey *and three more of the Defendants, convicted. The Matter accommodated.*

1683. 35 Car. II.

Trial of Pilkington, *&c.*

The Trial of THOMAS PILKINGTON and SAMUEL SHUTE, Sheriffs, HENRY CORNISH, Alderman FORD, Lord GREY of *Werk*, Sir THOMAS PLAYER, Knt. Chamberlain of *London*, SLINGSBY BETHEL, Eſq; FRANCIS JENKS, JOHN DEAGLE, RICHARD FREEMAN, RICHARD GOODENOUGH, ROBERT KEY, JOHN WICLHAM, SAMUEL SWINNOCK, and JOHN JEKYLL, Sen. for a *Riot*, *&c.* at *Guild-Hall*, *London*. 8 *May* 1683. 35 *Car.* II.

1683. 35 Car. II.

The Charge

AN Information was preferred againſt the Defendants, by Sir *Robert Sawyer*, Attorney-General, ſetting forth, That on the 24th of *June* then laſt paſt, a Common-Hall was ſummoned by Sir *John Moore*, Knt. Lord Mayor of *London*, and thereupon held for the Election of Sheriffs, for the Year enſuing; and that on the ſaid 24th of *June*, the ſaid Sir *John Moore* adjourned the ſaid Court, till the *Tueſday* following, by Proclamation, and commanded all Perſons to depart: But the Defendants, intending to diſturb the Peace, after the ſaid Adjournment, did unlawfully, with many other Perſons, continue together, and riotouſly aſſault the Lord Mayor: And the ſaid *Pilkington* and *Shute*, by Colour of their Office, as Sheriffs, with the reſt of the Defendants, did continue the Poll, declaring to the People, that Sir *John Moore*, the Lord Mayor, had no Power to adjourn the Poll, and continued this great Tumult for two Hours, to the Terror of the King's Subjects, *&c.*

The Evidence.

The great Queſtion being, Whether the Sheriffs had a Right to call, or adjourn the Common-Hall? it appeared, even by Sir *Robert Clayton* and the Defendants own Witneſſes, that the Lord Mayor always called thoſe Halls, for the Election of Sheriffs, and adjourned them; and that no Sheriffs had ever done either.

Proof alſo was made, that the Lord Mayor actually adjourned the ſaid Court, held on the 24th of *June* laſt, from *Saturday* to *Tueſday* following; and when the Cryer ſaid, *God ſave the King*, the diſaffected Mob hiſſed: And as the Lord Mayor came out of the Hall, he was thrown down by them, and his Hat ſtruck off; and that he was in great Danger of his Life. That when he was got out, he commanded the People to go Home; but *Shute* and *Pilkington*, and the other Rioters, continued the Poll a great while after, notwithſtanding: And ſome of their Aſſociates cried out, *No God bleſs the King*; *Down with the Sword*; *No Lord Mayor*; *Preſs on, preſs on*; *God ſave the Sheriffs*. And all the Defendants, above-named, were proved to be among the Rioters.

The Defence made by the Defendant's Counſel.

The Counſel for the Defendants, Mr. *Williams* and Sir *Francis Winnington*, obſerved, That it was not proved, any of the Defendants ſpoke the Words mentioned; and ſhould it be admitted that the Lord Mayor had the Right of adjourning the Poll, and the Sheriffs had not, but were in the Wrong in continuing the Poll after his Lordſhip had adjourned it; yet it would be heard to make a Riot of it, ſince they only proceeded on a Miſtake of their Right.

Mr. Attorney's Reply.

Mr. Attorney-General obſerved on the other Side, That now the Right of the Lord Mayor to call and adjourn theſe Aſſemblies, evidently appeared: And that it was as much a Riot to continue the Multitude together, after they were legally diſmiſſed, as it would have been to call them together, when they had no Authority to do it: It was uſurping an Authority in the City, contrary to the King's Charter. As the chief Magiſtrate made a Proclamation for them to depart, and they ſtaid together afterwards, and Diſorders happened, this was a Riot; and if no Diſorder had happened, it would have been a Rout, and unlawful Aſſembly, if they had continued together: And ſhould it be admitted, the Defendants themſelves committed no particular Outrage; yet their being there, and countenancing the Riot, made them guilty of it.

The

1683. 35 Car. II.

The Chief Juſtice directs the Jury,

The Chief Juſtice, in his Directions to the Jury, ſaid, It was no Excuſe to ſay they were ignorant of the Law; it was never the leſs a Riot: If the Defendants were really ignorant, that was to be conſidered when they came to ſet the Fines; but theſe Gentlemen could not be ignorant of this, becauſe it was the conſtant Practice, before their Eyes, for the Lord Mayor to adjourn theſe Aſſemblies: But though it was ſo before, they would not have it ſo now. They would have *No Tory Mayor*, *No God bleſs the King*; but would bleſs only their *Proteſtant Sheriffs*. The King muſt be put out of his Throne, to put the two Sheriffs into it. And though it was not proved that any of the Defendants ſaid theſe Words, yet they were the Men that kept this Rabble together three Hours.

The Defendants convicted, and fined.

The Jury withdrawing, after a ſhort Receſs, found all the Defendants, above-named, *guilty* of the Riot: Whereupon *Pilkington* was fined 500 *l.* *Shute* 1000 Marks, Lord *Grey* 1000 Marks, *Player* 500 Marks, *Bethel* 1000 Marks, *Corniſh* 1000 Marks, *Jenks* 3000 Marks, *Freeman* 300 Marks, *Goodenough* 500 Marks, *Deagle* 400 Marks, *Key* 100 Marks, *Wickham* 100 Marks, *Swinnock* 500 Marks, and *Jekyll* 200 Marks. 1683. 35 Car. II.

As many of the Defendants, as were living at the Revolution, and the Executors of thoſe that were dead, procured this Judgment to be reverſed by Writ of Error in Parliament: They alſo preſented a Petition to King *William*, ſuggeſting that they were convicted of this pretended Riot, by the Contrivance of Sir *John Moore* Lord Mayor, Sir *Dudley North*, Sir *Peter Rich*, and Sir *Edmond Saunders*, late Chief Juſtice of the *King*'s-*Bench*; and prayed they might be excepted out of the Act of Grace.

The Judgment reverſed at the Revolution.

The greateſt Inducement for reverſing this Judgment, poſſibly, was the pretended Zeal of the Defendants for the Revolution.

1683. 35 Car. II.

The Trial of Sir PATIENCE WARD, for *Perjury*, in the Court of *King*'s-*Bench*, the 19th of *May*, 1683. 35 *Car.* II.

1683. 35 Car. II.

Ward's Trial.

The Charge.

AN Information was brought by Mr. Attorney-General, Sir *Rober Sawyer*, againſt Sir *Patience Ward*, ſetting forth, That whereas the moſt illuſtrious *James* Duke of *York*, the King's only Brother, had brought an Action *de Scandalis Magnatum* againſt *Thomas Pilkington*, for ſpeaking the following ſcandalous Words, *Viz.* *He* (meaning the Duke) *hath burnt the City, and is come to cut our Throats.* The ſaid Sir *Patience* did falſly and corruptly ſwear, at the Trial between the Duke and the ſaid *Pilkington*, *That there was no mention of the Duke of* York, *or of cutting of Throats, while the ſaid* Pilkington *was in the Room, where thoſe Words were charged to have been ſpoken: That the Diſcourſe about the Duke of* York *was over, before* Pilkington *came in, and that the Duke of* York *was not named.* Whereas in Truth there was mention made of the Duke of *York*, and of cutting of Throats; and the Diſcourſe concerning the Duke of *York*, was not over, when the ſaid *Pilkington* came into the ſaid Room.

The Evidence.

The Witneſſes being called, Mr. *Hatch* depoſed, That Sir *Patience do poſitively* affirm, upon his Oath, at the ſaid Trial between the Duke and *Pilkington*, *That* Pilkington *did not come in, till all the Diſcourſe was over about the Duke:* And did further depoſe, That there was a Diſcourſe about burning the City by the *Papiſts*; and *Pilkington* ſaid, *He hath burnt the City:* Whereupon *he* (Sir *Patience*) *took him by the Shoulder, ſaying, explain yourſelf: You mean* Hubert (the Perſon that was hanged for firing the City;) and *Pilkington* anſwered, *Yes:* And that Sir *Patience* did poſitivley depoſe further, *That there was no Mention made of cutting of Throats.*

Mr. *Wood* depoſed, That Sir *Patience*, at the ſaid Trial, did affirm poſitively, or upon his Oath, *That the Diſcourſe concerning the Duke of* York *was over, before* Pilkington *came in; and that there was no Mention of cutting of Throats.*

Sir *James Smith*, Alderman depoſed, That Sir *Patience* did poſitively, or upon his Oath, ſay, at the aforeſaid Trial, *That Mr.* Pilkington *was not there, while they were diſcourſing concerning going to St.* James's (the Reſidence of the Duke;) *declaring the Duke was not talk'd of:* Whereupon the Chief Juſtice *Pemberton* applying himſelf to Sir *Harry Tulſe*, Sir *Harry* made anſwer, *I am very ſorry to ſay it; he was there all the while.*

Sir *John Peake* depoſed, That Sir *Patience* affirmed, either poſitively, or upon his Oath, *That Mr.* Pilkington *was not by, while the Duke of* York *was mentioned.*

Sir *Thomas Field* depoſed, That Sir *Patience* did ſay, *what Mr.* Pilkington *was not in the Room, Then any thing was ſpoken relating to the Duke of* York.

Sir *Francis Butler*, who was Foreman of the Jury, at the Trial between the Duke and *Pilkington*, depoſed, That the great Queſtion at that Trial was, *Whether the Words* (*firing the City*) *related to the Duke of* York, *or not?* And Sir *Patience* depoſed, They did not relate to the Duke of *York*, and would prove that Alderman *Pilkington* was not in the Room, while they diſcourſed of the Duke of *York*; that this he ſwore poſitively, to the beſt of his Remembrance; he heard no Qualification: That after the Jury went out of Court, they debated the Matter among themſelves; and they ſhould have laid a little more Weight on the Evidence of Sir *Patience*, if he

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he had not ſworn, *That when Sir* William Hooker *took ſome Exceptions at* Pilkington's *Words, and asked, What do you mean? He (Sir* Patience) *laid one Hand upon* Pilkington's *Mouth, and the other upon his Breaſt, and demanded alſo, What do you mean? And Anſwer was made, Hubert,* This made the Jury believe his Evidence ought to be ſet aſide.

Sir *Harry Tulſe*, Alderman, depoſed, That on the 10th of *April*, according to an Order of Court made the Day before, they (the Aldermen) met at *Guildhall*, where were preſent Sir *William Hooker*, Sir *Patience Ward*, Sheriff *Pilkington*, and himſelf: And Alderman *Pilkington* ſaid, *He burnt our City, and is come (or will come) to cut our Throats.* This Evidence he (Sir *William Tulſe)* gave at the Trial between the Duke and *Pilkington*; and now averred that it was true. He teſtified further, That he was asked at that Trial, What was the preceding Diſcourſe? He anſwered, It was concerning an Order for going to St. *James*'s, or to the Duke of *York*; ſome complained of that Order, and would have had it re-debated: Whereupon he (Sir *Harry)* anſwered, It was too late now, for the Court had agreed it; and then *Pilkington* ſaid thoſe Words, *He hath burnt our City, and is come, or will come, to cut our Throats.*

It being demanded of Sir *Harry*, if the Duke was named? He anſwered, he could not poſitively ſay he was named at that Time; for the Debate was about the Order made, to congratulate the Duke of *York*, or of going to St. *James*'s; one of them he was ſure was named.

The Chief Juſtice demanding of Sir *Harry*, who he underſtood *Pilkington* meant, when he ſaid, *He is, or will, come to cut our Throats?* Sir *Harry* anſwered, In his Opinion it was the Duke of *York*.

Sir *William Hooker* depoſed, That *Pilkington*, ſtanding at the End of the Table, in the Room where the Aldermen were met, did ſay, *Hath he burnt the City? and is he come to cut our Throats?*

It being demanded, If the Duke of *York* was named? Sir *William* anſwered, he (Sir *William)* did name the Duke of *York* to *Pilkington*, after thoſe Words were ſpoken: And being further asked, If it was plain, *Pilkington* meant the Duke of *York*, when he ſaid thoſe Words? Sir *William* anſwered, Nothing could appear more plain; for the Diſcourſe was about that Matter, and nothing elſe; and that Sir *Patience Ward* was there all the Time.

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The Defendant's Counſel urged in his Behalf, That Sir *Patience* did not ſwear any Thing poſitively, at the Trial between the Duke and *Pilkington*, but qualified his Evidence, by ſwearing, *As he believed*, or, *according to the beſt of his Memory*, and conſequently could not be perjured; and brought ſeveral Witneſſes, and ſome that took Notes at that Trial, who teſtified, That Sir *Patience* frequently made Uſe of qualifying Expreſſions at that Trial, *(viz.) As he believed, or remembered.*---They brought alſo a great many Witneſſes to ſwear, That Sir *Patience* was a Gentleman of a fair Character, and not likely to perjure himſelf.

The Defence.

Evidence for the Defendant.

But after the Defendant's Counſel had produced all their Witneſſes, the King's Counſel called Sir *Francis Lee*, who was upon the Jury between the Duke and *Pilkington*; and Sir *Francis* being ſworn, gave the following Account of the Matter, *(viz.)* That Sir *Patience* did ſwear at that Trial, *That Mr.* Pilkington *was not in the Room, when the Diſcourſe concerning the Duke of* York *was mentioned:* And did afterwards ſwear, *That when Mr.* Pilkington *ſaid, He hath burnt the City, he (*Sir *Patience) clap'd one Hand on his Mouth, and the other on his Breaſt, and bid him explain himſelf, who he meant? Hubert?* That Sir *Francis Butler*, the Foreman, thereupon jogged him *(Lee)* and bid him take Notice of that: And that they did infer Mr. *Pilkington* muſt mean the Duke of *York*; for elſe why would Sir *Patience* have ſtopped his Mouth?

The Chief Juſtice having ſummed up the Evidence, the Jury withdrew, and after ſome Time, brought the Defendant in GUILTY; who, having ſome Intimation, that it was intended to ſet him in the Pillory, thought fit to abſcond.

He is convicted.

I ſhall make no other Obſervations on this Trial; but that Sir *Patience* was evidently perjured, in the Teſtimony he gave at the Trial between the Duke and *Pilkington*; by depoſing, in one Part of that Trial, That *Pilkington* did not come in, till the Diſcourſe concerning the Duke was over; and in another, that he ſtopped his Mouth for reflecting on the Duke, and asked what he meant?

Remarks.

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The King and the City.

The Trial between the King and the City of *London*; on an Information in the Nature of a *Quo Warranto*, in the Court of *King's-Bench*, in the Years 1682 and 1683. 35 *Car.* II.

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THIS Cauſe was argued firſt in *Hilary*-Term, 1682-3, by Mr. Solicitor *Finch*, (afterwards Earl of *Aylesford)* for the King; and by Sir *George Treby*, Recorder of *London*, for the City. And in *Eaſter*-Term, 1683, by Sir *Robert Sawyer*, Attorney-General, for the King; and by Mr. *Pollexfen*, for the City. And in *Trinity*-Term, 1683, 35 *Car.* II. Judgment was given againſt the City.

The Information ſets forth, That the Mayor and Commonalty, and Citizens of the City of *London*, by the Space of a Month, and more, before the Information preferred, uſed, and yet did claim to have and uſe, without any lawful

The Information.

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lawful Warrant or Regal Grant within the ſaid City of *London* and Liberties, the Liberties and Privileges following: 1*ſt*, To be of themſelves a Body Corporate and Politick, by the Name of Mayor and Commonalty, and Citizens of the City of *London*. 2*dly*, To conſtitute Sheriffs of the ſaid City and County of *Middleſex*: And 3*dly*, That the Mayor and Aldermen of the ſaid City ſhould be Juſtices of Peace there: All which Liberties, Privileges, and Franchiſes, the ſaid Mayor, Commonalty, and Citizens, did uſurp on the King.

To which the ſaid Mayor, Commonalty, and Citizens appear by their Attorney, and plead. 1*ſt*, That the ſaid City hath been a Body Corporate and Politick Time out of Mind; and that their Liberties and Franchiſes have been confirmed by the Statute of *Magna Charta*, and many ſubſequent Statutes there enumerated: And by this Warrant they claim to be, and are, a Body Politick, *&c.* and traverſe their uſurping on the King. 2*dly*, As to their conſtituting Sheriffs, they plead, That King *John*, on the 5th of *July*, in the firſt Year of his Reign, granted them the Power of electing and conſtituting Sheriffs of *London* and *Middleſex*, *in perpetuum*. 3*dly*, As to the Mayor and Aldermens being Juſtices of Peace, they plead, That King *Charles* I. by his Letters Patents, dated 18 *Oct.* 14 *Car.* I. granted, that the Mayor and ſuch Aldermen as had been Mayors, ſhould be Juſtices of Peace.

Reply. To this Plea Mr. Attorney-General replied: And as to their being a Body Politick and Corporate, takes Iſſue, that they never were a Body Corporate----And then pleads over, That the Mayor, Commonalty, and Citizens, aſſuming to themſelves to be a Body Politick and Corporate; and by Reaſon thereof, to have Power to aſſemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preſerving the King's Peace under Colour thereof; but reſpecting only their private Gain, and againſt the Truſt in a Body Corporate, aſſumed an unlawful Authority to levy Money on the King's Subjects, to their own Uſe, by Colour of Laws, by them *de facto* made; and in Proſecution of ſuch unjuſt Power, did, on the 17th of *September*, 26 *Car.* II. make a certain Law for levying ſeveral Sums of Money on all the King's Subjects, coming to the publick Markets within the City, to ſell their Proviſions, *viz.* For every Horſe Load of Proviſions brought to be ſold, 2 *d. per* Day: For every Dorſer of Proviſions, 6 *d. per* Day: For every Cart Load, drawn with three Horſes, 4 *d. per* Day; and if drawn with more than three Horſes, 6 *d. per* Day: And that theſe Sums ſhould be paid to the Uſe of the City. And if any refuſed to pay, to be removed from his Place in the Market: And that by Colour of this Law, the Mayor, *&c.* had, for ſeven Years after the making it, received divers great Sums, amounting to 5000 *l.* in Oppreſſion of the King's Subjects.

And further, Whereas a Seſſion of Parliament was holden by Prorogation, and continued to the 10th of *January*, 32 *Car.* II. and then prorogued to the 20th of *January* then next; the Mayor, Commonalty, and Citizens, 13 *January*, 32 *Car.* II. in their Common-Council, unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and without any lawful Authority, aſſumed to themſelves an Authority of Cenſuring and Judging of our ſaid Lord the King, and the Prorogation of Parliament, ſo made by him; and did vote and order a Petition to be preferred to the King, ſetting forth, That by the ſaid Prorogation, the Proſecution of the publick Juſtice of the Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and of his Proteſtant Subjects, had received Interruption: And that the ſaid Mayor, *&c*, in Common-Council aſſembled, did unlawfully, maliciouſly, adviſedly, and ſeditiouſly, and with Intention that the ſaid Petition ſhould be diſperſed among the King's Subjects, to induce an Opinion in them, that the King, by prorogueing the Parliament, had obſtructed the publick Juſtice; and to incite the King's Subjects to a Hatred of his Perſon and Government, and to diſturb the Peace of the Kingdom, did order the ſaid Petition to be printed; and the ſame was printed accordingly, to the Intent and Purpoſe aforeſaid.

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By which the Mayor, Commonalty, and Citizens aforeſaid, the Privilege, Liberty, and Franchiſe of being a Body Politick and Corporate, did forfeit: And afterwards, for the Time in the Information ſpecified, that Liberty and Franchiſe of being a Body Politick, did uſurp upon the King, *&c.* And as to the other two Pleas, *(viz.)* The having Sheriffs, and Juſtices of Peace, the Attorney-General imparles to *Michaelmas* Term. *Nor did he ever proceed on this Part of the Information.*

Rejoinder. The Mayor, Commonalty, and Citizens, thereupon rejoin, and ſay, That the Pleas by the Attorney pleaded, are inſufficient to exclude them from being a Corporation.

That no Act, or By-Law of the Common-Council, is the Act of the Body Corporate.

That they never took upon them, by any unlawful Authority, to tax the King's Subjects.

That there have been, Time out of Mind, publick Markets in the ſaid City, of which the Mayor and Commonalty were ſeized in Fee; and have at all Times, at their own Coſts, provided Stalls, Standings, and other Accommodations for the Market-People; and received reaſonable Tolls and Rates of Perſons reſorting to the ſaid Markets, for their Stalls, Standings, *&c.* That theſe Cuſtoms, Liberties and Privileges, have been confirmed to them by *Magna Charta*, and other ſubſequent Statutes.

That by Reaſon of the burning the City in 1666; and the Alterations in the Market-places occaſioned thereby, for the eſtabliſhing and reſettling the Markets within the ſaid City, the Common-Council did, 17 *September*, 26 *Car.* II. make an Ordinance, That the Rates and Sums in the Replication mentioned, ſhould be paid to the Uſe of the ſaid Mayor, Commonalty, and Citizens; or, upon Refuſal, to be removed out of the Market: And aver, that theſe are all the Rates and Duties paid,

and

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and were reaſonable Sums; and theſe they had demanded and received, to defray the Charges of erecting Stalls, Shelters, and other Neceſſaries, for the Market-People; and the Amendment, Paving and Cleanſing the ſaid Market-places, as was lawful for them to do.

As to the other Matter alledged by Mr. Attorney, That there had been an helliſh and execrable Plot proſecuted by the Papiſts, to deſtroy the King and Government, and the Proteſtant Religion: That Juſtice *Godfrey*, who took the Examination of the Witneſſes, and of the burning the City, had been murdered by the Conſpirators, for which Murder *Green* and others had been hanged: That *Coleman* had been executed for the Conſpiracy; and five Popiſh Lords impeached, and ſent to the *Tower* for the ſame: That the King, in his Speech to the Parliament, had recommended to them the further Examination of that Conſpiracy, declaring, He thought neither himſelf or them ſafe, till that Matter was gone through; and therefore, that it was neceſſary that the ſaid Lords in the *Tower* ſhould be brought to their Trials, that Juſtice might be done. And the Parliament had addreſſed the King, declaring their deep Senſe of the ſad Condition of the Realm, occaſioned by the Conſpiracies of the Papiſts; and that a ſolemn Faſt might be kept thereupon, which was kept accordingly, by Virtue of his Majeſty's Proclamation. And divers Bills were prepared for Preſervation of his Majeſty's Subjects.

That theſe Impeachments and Bills being thus depending, the Parliament was prorogued the ſaid 10th of *January*; by Reaſon whereof the Citizens were much diſquieted with the Senſe of the Danger threatning the King and Government, by Reaſon of the Conſpiracies aforeſaid, affirmed and declared both by the King and Parliament: And conceiving no better Means to prevent them, than by the Sitting of the Parliament; and it being lawful to petition his Majeſty.

The Mayor, Sir *Patience Ward*, and the Aldermen and Commons in Common-Council aſſembled, did cauſe the Petition mentioned, to be drawn; and after it was preſented to the King, cauſed it to be printed, for the Satisfaction of the troubled Minds of the Citizens; and traverſe the Writing, or making any other Petition; or making this to any other End or Intent than they had pleaded.

Sur-rejoinder. Mr. Attorney ſur-rejoins, and ſays, That the Mayor, *&c.* were not ſeized of the Markets; nor provided Stalls, *&c.* at their Charges: And that the ſaid Rates were not reaſonable.

And for Plea, ſays, That by a Statute of 22 *Car.* II. it was enacted, That Places for Markets ſhould be ſet out, and 2 *d. per* Chaldron upon Coals, for the Charges of that, and many other Things, was given; and they received great Sums out of that Duty, for the Purpoſes aforeſaid; and yet, for their own private Lucre, they took the Money impoſed by the ſaid Ordinance: And traverſes, that the Mayor and Citizens have, Time out of Mind, taken Tolls, Rates, *&c.*

As to the Plea of the Mayor, Commonalty, and Citizens, pleaded to the Reſidue of the Attorney's Matter, aſſigned for a Forfeiture: the Attorney, by Proteſtation, ſaith, That the aforeſaid Prorogation of the Parliament was for urgent Cauſes, concerning the Good of the Kingdom; and that the Proſecution of publick Juſtice was not interrupted thereby ---And demurrs to the ſaid Plea of the Mayor, *&c.* pleaded to the Petition.

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Rebutter. The Mayor and Commonalty, as to the making the ſaid Ordinance, for the Payment of Money by thoſe that come to the ſaid Markets, ſay, as before, That they had, Time out of Mind, been accuſtomed to receive reaſonable Tolls, *&c.* And for this they put themſelves upon the Country, *&c.*

And as to the Plea pleaded by the Mayor, *&c.* to the Reſidue of the Matter, by the Attorney-General, and aſſigned for a Forfeiture, they join in Demurrer.

Argued by Mr. Solicitor. The firſt Argument was in *Hillary-Term*, 1682-3, 35 *Car.* II. by Mr. Solicitor, who obſerved, That there were theſe four Queſtions in the Caſe, 1. Whether any Corporation could be forfeited? *And he held it might.*

2. Whether the City of *London* differed from other Corporations, as to Point of Forfeiture? *And he held it did not.*

3. Whether any Act of the Mayor, Aldermen, and Common-Council, be ſo much the Act of the Corporation, as it could make a Forfeiture? *And he held it might.*

4. Whether the Acts by them done, in making the By-Law, and receiving Money by it: Or in making the Petition, and cauſing it to be printed and publiſhed, be ſuch Acts as would make a Forfeiture of the Corporation? *And he held they were.*

Sir George Treby. The Recorder, Sir *George Treby*, who argued for the City, endeavoured to ſhew, 1. That a Corporation could not be forfeited, and that *London* had greater Privileges than any other Corporation. 2. That no Act of the Mayor, Aldermen, and Common-Council, could occaſion a Forfeiture; and 3. That neither by levying Tolls and Rates on the Market-People; nor by their petitioning the King, had they incurred a Forfeiture.

Mr. Attorney *Mr.* Pollexfen. Theſe Points were argued again in *Eaſter-Term*, 1683, 35 *Car.* II. by Mr. Attorney for the King, and by Mr. *Pollexfen* for the City; but the Arguments being drawn out to an immoderate Length, I ſhall only recite the Judges Opinion of them, when they gave Judgment for the King, in *Trinity-Term* following.

The Judges Opinions. Mr. Juſtice *Jones*, Mr. Juſtice *Raymond*, and Mr. Juſtice *Wythens*, being in Court, Mr. Juſtice *Jones* pronounced the Judgment, declaring that the Lord Chief Juſtice *Saunders* (who was then ill) and the whole Bench were of the ſame Opinion, and had all agreed.

1. That a Corporation, Aggregate, might be ſeized. That the Statute of 28 *Edw.* III. cap. 10. was expreſs, That the Franchiſes and Liberties of the City, upon ſuch Defaults, ſhould be taken into the King's Hands. And that Bodies politick may offend, and be pardoned, appeared by the general Article of Pardon, 12 *Car.* II. Whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 *Car.* II. which

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which provides, That no Corporation ſhall be avoided, for any Thing by them miſdone, or omitted to be done; ſhews alſo, that their Charters may be avoided for Things by them miſdone, or omitted to be done.

2. That the exacting, and taking Money, by the pretended By-Law, was Extortion, and a Forfeiture of the Franchiſe of being a Corporation.

3. That the Petition was ſcandalous and libellous, and the making and publiſhing it, a Forfeiture.

4. That the Act of the Common-Council, was the Act of the Corporation.

5. That the Matter ſet forth in the Record, did not excuſe, or void thoſe Forfeitures, ſet forth in the Replication.

6. That the Information was well founded.

Judgment againſt the City.

And gave Judgment, THAT THE FRANCHISE SHOULD BE SEIZED INTO THE KING'S HANDS; but the Entry thereof reſpited, till the King's Pleaſure was known.

And as to the Iſſue joined, to be tried by the Country, *(viz.)* The claiming to have and conſtitute Sheriffs; and as to the Mayor and Aldermen's being Juſtices of the Peace, the Attorney-General declared, he would not proſecute that Part of the Charge.

Proceedings ſubſequent to the Judg-

Some few Days after Judgment was given againſt the City, a Common-Council aſſembled, and drew up a Petition to his Majeſty; in which they expreſſed their hearty Sorrow for the Miſgovernment of the City, of late Years; whereby the Citizens had fallen into his Majeſty's Diſpleaſure, which had occaſioned a *Quo Warranto*, and Judgment againſt them; and that they were thankful the Judgment was not yet entered up, and begged his Majeſty's Pardon for all their Offences, promiſing conſtant Loyalty, and a regular Adminiſtration of the Government of the City for the Future.

This Petition, being preſented to his Majeſty, at a Council held at *Windſor*, the 18th of *June*, by the Lord Mayor, Sir *William Pritchard*, attended by ſome other Loyal Aldermen and Citizens, they were anſwered, That for the Sake of ſo many of the preſent Magiſtrates, and other eminent Citizens, that were of undoubted Loyalty, his Majeſty would ſhew the City all the Favour they could reaſonably deſire; and though Judgment had been obtained on a *Quo Warranto*, he did not intend to prejudice them in their real Properties or Cuſtoms; and ſhould not reject their Suit, if they agreed to the following Terms, *(viz.)* That no Lord Mayor, Sheriff, Recorder, Common Serjeant, Town-Clerk, Coroner, or Steward of the Borough of *Southwark*, ſhould be admitted to exerciſe their reſpective Offices, before his Majeſty approved them; and if they were diſapproved, the City ſhould proceed to another Choice; which if the King diſliked, he might appoint the ſaid Officers himſelf; with ſome other leſs material Alterations: That theſe Regulations being ſubmitted to, his Majeſty would not only pardon the City, but confirm their Charter. And on the other Hand, if they did not acquieſce in this, his Majeſty had ordered the Attorney-General to enter the Judgment on the *Saturday* following.

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A Common-Council being called at *Guild-hall*, two Days after, the Queſtion was put, Whether they ſhould comply with his Majeſty's Regulations? And upon a Diviſion, 108 were for it, and 86 againſt it: Whereupon the Sheriffs attended his Majeſty the next Day, and acquainted him, that they ſubmitted to his Regulations. However, the City neglecting to ſign the ſaid Submiſſion, and Regulations; and a great many Citizens being found deeply engaged in the Conſpiracy againſt his Majeſty; and that the Malcontents relied chiefly on their Aſſiſtance, the King was in a Manner compelled, in his own Defence, and to preſerve himſelf upon the Throne, to take Advantage of the Judgment on the *Quo Warrant*, and cauſe it to be entered up: After which the Lord Mayor, Sheriffs, and other Officers, received their Commiſſions from the King, without an Election; and his Majeſty, by his ſole Authority, changed the Magiſtrates of the City, whenever he ſaw fit: And in this Situation the Magiſtracy of the City remained, till the Year 1688; when King *James* II. being alarmed by the Preparations made by the *Dutch*, to invade the Kingdom, thought fit to reſtore them their Charter, and the Liberty of electing their Officers, and Magiſtrates, as formerly; and therupon Sir *George Treby*, the Recorder, and the reſt of the Officers, were reſtored.

The Judgment entered.

Lord Mayor, &c. appointed by the King.

The Charter reſtored.

An Act for Reverſing the Judgment.

By a Statute of 2 *W.* and *M.* cap. 3. Reciting that a Judgment had been given in the *King's-Bench*, in *Trinity-Term*, 35 *Car.* II. on a *Quo Warranto*, againſt the City of *London*, That the Franchiſe of the ſaid City ſhould be ſeized into the King's Hand, as forfeited: It is thereby declared, that the ſaid Proceedings were illegal and arbitrary; and enacted, that the ſaid Judgment ſhould be Reverſed, and made Void.

And that the Mayor, Commonalty, and Citizens of *London*, ſhould remain a Body politick, by the Name of the Mayor, &c. without any Seizure, or Forejudger, of the ſaid Franchiſe, upon Pretence of any Forfeiture, or Miſdemeanor; and ſhould enjoy all their Rights, Charters, &c. which they had at the Time of Recording the ſaid Judgment. And that the City-Officers ſhould be reſtored, that were diſplaced after the ſaid Judgment.

The

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The Trial of Captain THOMAS WALCOT, for *High-Treaſon*, at the *Old-Baily*, *London*, *July* 12, 1683. 35 *Car.* II.

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Walcot's *Trial.*

The Indictment.

THE Indictment charged the Priſoner with High-Treaſon, in compaſſing, and conſpiring the Death of the King, to raiſe a Rebellion, and to ſubvert the Government; and to that End, meeting and conſulting with divers other Traitors, to accompliſh the ſaid Treaſons, promiſing to be aiding and aſſiſting to them, and providing Arms for that End.

Col. Rumſey's *Evidence.*

The Witneſſes being called, Colonel *Rumſey* was ſworn, who depoſed, That the latter End of *October*, or the Beginning of *November* laſt, he was with Lord *Shaftesbury* late at Night, who told him, that the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, and Sir *Thomas Armſtrong*, were at Mr. *Shepherd*'s, a Merchant, near *Lombard-Street*, and he deſired this Witneſs to go to them, and know what they had done about the Riſing at *Taunton*: That he went accordingly, and Mr. *Shepherd* carried him up to them: And they told him Mr. *Trenchard* had failed them about the Men, and they could proceed no farther at that Time: That he returned to Lord *Shaftesbury* next Day, and told him what they ſaid; whereupon he prepared to go for *Holland*, ſaying, There was no Dependance on thoſe Gentlemen that met, and he would leave *England*.

A Fortnight after, there was a Meeting at Mr. *Weſt*'s Chamber in the *Temple*, (Captain *Walcot* was in *Holland* then) and there it was ſaid, nothing could be done by a general Riſing: There was no ſurer Way than to take off the King and the Duke; and that could not be carried on without Mr. *Ferguſon*, who was then in *Holland*: Whereupon a Letter was ſent him, and he came over with Capt. *Walcot*: And there was a Meeting ſoon after, at which it was concluded, That nothing could be effected without taking off the King and the Duke: And there were two or three Meetings to find out a Number of Men, without which, *Rumbold* would not undertake it; at which Meetings Mr. *Walcot* was not preſent; but to the third or fourth Meeting Mr. *Walcot* came, and reſolved, at laſt, to join in the Matter: He would not, indeed, have a Hand in attacking the Coach; but would command a Party that ſhould charge the Guards. There were to be ſeveral Parties; one ſmall Party was to have killed the Poſtilion and the Horſes; Mr. *Rumbold*, with a certain Number, was to ſet upon the Coach; and Capt. *Walcot* on the Guards: And this was to have been executed at Mr. *Rumbold*'s Houſe, commonly call'd the *Rye-Houſe*, near *Hodſon* in *Hertfordſhire*, as the King came laſt from *New-market*: Mr. *Rumbold*, and thoſe who attacked the Coach, were to fire Blunderbuſſes into it; and, if they had miſſed, they were to have done it with their Swords.

This Reſolution was taken laſt Spring, at Mr. *Weſt*'s Chamber, before the King came from *New-market*; and was the firſt Meeting Capt. *Walcot* was at. There were ſeveral Meetings afterwards at Mr. *Weſt*'s Chamber, to conſult whether they could raiſe the Number reſolved upon; and Notes were brought by *Goodenough* and *Rumbold*, that they might not be deceived in their Number: And at that Time Capt. *Walcot* was there, and undertook to go to *Rumbold*'s Houſe (the *Rye*) and he thought did go down to that Place: And *Rumbold* inſiſted on having fifty Men for this Enterprize.

That he was alſo at the *Salutation* Tavern in *Lombard-ſtreet*, and at the *Green-Dragon* on *Snow-Hill*, with Capt. *Walcot*, and other Conſpirators; where they diſcourſed of dividing the City into twenty Parts; and how many Men could be raiſed out of every Part; and they were to be divided into Fifteenths, and every Man to lead a Fifteenth. *Goodenough*, *Wade* and *Weſt*, were entruſted with this: *Goodenough* gave an Account of ſeven Parts of the twenty; and ſaid, out of theſe would be raiſed 2900 Men; but that the other thirteen, as he computed, would not raiſe as many more.

The Chief Juſtice demanding, Why the Deſign was not executed as the King came from *New-market*? *Rumſey* anſwered, The Fire happened there, and brought the King from *New-market* before the Men could be got ready: They talked of doing it the *Saturday* before *Eaſter*; but he came back the *Tueſday* before. The News coming to Town on *Friday*, of the Fire at *New-market*, they were all in Confuſion, and could not get their Men ready by *Tueſday*. *Ferguſon* then lodged in *Covent-Garden*, and ſent for ſeveral of the Men to come to him, to ſee if they could be got together before *Tueſday*, when the King was to come back; but it could not be done, and it was laid aſide for that Time: But there was a Meeting immediately after, where *Walcot*, *Weſt*, *Rumbold*, and *Goodenough* were preſent; and it was reſolved, that Money ſhould be raiſed to buy Arms, that they might not be diſappointed again; and *Rumbold* undertook to provide them.

The Chief Juſtice demanding, If they had any further Deſign upon the King at this Meeting? *Rumſey* anſwered, Yes, it was to be done at his coming from *Windſor* to *London*; or from *Windſor* to *Hampton-Court*, or at the Play-Houſe; and theſe Arms were to be in Readineſs againſt any Opportunity that ſhould happen: That Mr. *Weſt* alſo undertook to provide Arms; and told the Deponent he had bought them; but did not get his Money in ſix or ſeven Weeks after, and then he was paid an hundred Pounds by *Ferguſon*.

Mr. Solicitor demanding when their laſt Meeting was? *Rumſey* anſwered, He thought it was the very *Thurſday* before the Diſcovery, at the *Salutation-Tavern* in *Lombard-ſtreet*, where were preſent *Walcot*, *Weſt*, *Wade*, the two *Goodenoughs*, *Nelthrop*, and himſelf. They had ſome Intimations it was diſcovered, the *Friday* or *Saturday* before; and did meet at

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the *George* on *Ludgate-hill:* They went thither to know of *Goodenough*, what was done about the other thirteen Parts, being reſolved to carry on the Deſign ſtill. He told them he had no Account; but thought they ſhould have a Meeting on *Saturday* in the Afternoon, at the *George* on *Ludgate-hill*, where they ſhould have an Anſwer; but the Diſcovery happening in the mean time, but few of them met there. The *Monday* after, there was a Meeting at Capt. *Tracy*'s; where were preſent Capt. *Walcot*, Mr. *Weſt*, *Wade*, *Nelthrop*, the two *Goodenoughs*, and *Ferguſon*; and they exclaimed againſt *Keeling*, who made the Diſcovery, and took Reſolutions to be gone.

Capt. *Walcot* demanding, If he ever met at Mr. *Weſt*'s Chamber till his Majeſty's Return from *New-market?* *Rumſey* anſwered, There was one Meeting at the *Five Bells* in the *Strand*; where only *Ferguſon*, *Rumbold*, *Weſt*, *Goodenough*, and himſelf, were preſent; but *Ferguſon* had informed them Capt. *Walcot* would be there: However, Capt. *Walcot* came to their next Meeting at Mr. *Weſt*'s Chamber, at the time the King was at *New-market:* The King was at *New-market* when Captain *Walcot* and Mr. *Ferguſon* came from *Holland.*

Keeling's *Evidence.*

Then *Keeling* was ſworn, and depoſed, That meeting *Rumbold* and *Goodenough* at the *Sun-Tavern*, ſome time before the King went to *New-market*, *Goodenough* enquired of him then, and ſeveral times afterwards, What Men he could procure to go down to *New-market* to kill the King? That he had ſome Diſcourſe with *Burton* and *Thompſon* on the ſame Subject; and that *Burton* told him, *Barber* and *Thompſon* would be concerned in it: That the *Friday* after the Fire happened at *New-market*, *Rumbold* came to the Deponent's Houſe, to ſee what Men he could procure; and deſired to ſee them next Day: That the Deponent, *Rumbold*, *Burton*, *Thompſon* and *Barber*, met at the *Mitre-Tavern*, without *Aldgate*, next Day, and diſcourſed of going down to *Rumbold*'s Houſe, called the *Rye*; and *Rumbold* ſaid, there could not be a better Place for executing their Deſign, it ſtanding remote from Neighbours: And as an Argument to prevail with them, he ſaid, It would be keeping one of the Commandments to kill the King and the Duke of *York*, for it would ſave abundance of Bloodſhed; and acquainted them with the Manner they deſigned to effect it. That they afterwards went to the *Dolphin* in *Bartholomew-lane*, (where were preſent *Rumbold*, *Weſt*, *Goodenough*, and *Hone* the Joyner) and diſcourſed of the Time the King was expected home: And *Weſt* asked how many Swan-quills, Gooſe-quills, and Crow-quills, and what Sand and Ink were wanting? And it was anſwered, Six Swan-quills; twenty Gooſe-quills; and twenty or thirty Crow-quills. That Swan-quills were Blunderbuſſes; Gooſe-quills, Muskets; Crow-quills, Piſtols; and Sand and Ink, Powder and Bullets. That as to Capt. *Walcot*, the Priſoner, he was at the *Salutation-Tavern* with them when *Weſt* called him *Culing*; and ſaid, He hoped to ſee him at the Head of as good an Army at *Wapping*, as *Culing* was at *Cullen*; which he ſuppoſed Capt. *Walcot* remembered very well.

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That ſome time before the Deſign was diſcovered, *Goodenough* gave the Deponent a Paper, wherein he told him, he had divided the City into twenty Parts, and one of them was for himſelf; and bid him to communicate it to nine or ten Perſons he could truſt; and direct them to go to ſeveral other Perſons, and ask them, *Suppoſing the Papiſts ſhould riſe, or there ſhould be a* French *Invaſion, Are you in a Poſture of Defence?* This was all we were to communicate; and this was to feel them, and ſee how many Men they could raiſe. That *Goodenough* ſaid, they had a Deſign to kill the King at the *Bull-Feaſt*, and would have theſe Men in Readineſs: That it was to be laid upon the Papiſts; and to draw in the poor People, they were to declare they ſhould be eaſed of Chimney-Money. The Deponent underſtood, he was intended to go down to *Rumbold*'s Houſe with the Men he raiſed; but he did not remember he was asked the Queſtion. He confeſſed alſo, he ſuffered himſelf to be made a Special Bailiff, and actually arreſted the Lord Mayor; but ſaid he was put upon it by *Goodenough*, the Under-Sheriff.

Bourn's *Evidence.*

Zachary Bourn being ſworn, depoſed, That *Ferguſon* lodged at his Houſe; and Capt. *Walcot*, the Priſoner, uſed to come thither. That he met Capt. *Walcot*, and ſeveral more of the Conſpirators, at the *Dragon* on *Snow-Hill*; and their Buſineſs was to raiſe Men, and divide the City into twenty Diviſions, in order to the ſecuring his Majeſty and the Duke of *York*, and ſetting up the Duke of *Monmouth*; he thought they never expreſſed it, *Killing them*, at thoſe Meetings. That they were to raiſe as many Men as they could in their Diviſions, but were not to tell them their direct Buſineſs; but only ſay, *If there ſhould be Occaſion*; or, *If the Papiſts ſhould riſe?* That they might know their Strength. That *Goodenough* brought an Account of about four thouſand he could raiſe, when Capt. *Walcot* was preſent: And the Captain was at three of their Meetings, if not at all.

That they were to have ſeized the Lord Mayor, the two Sheriffs, the Chief Miniſters of State, and ſome of the Aldermen: And *Weſt* ſaid, it ſhould be his Buſineſs to ſecure the Lord Keeper; he would call him to Account, and put him in mind of *Colledge.*

That the Conſpirators met at Capt. *Tracy*'s the *Saturday* before the Diſcovery; and that Evening they had ſome Intimation of it. That on *Monday* Morning following, he was at a Meeting with Capt. *Walcot*, Mr. *Ferguſon*, *Goodenough*, *Weſt*, *Norton*, *Rumſey*, and one Capt. *Pottle.* They reſolved on nothing then; but he left them debating on killing of *Keeling*, becauſe he had made a Diſcovery. And they ſaid, they thought they had better ſtand to it with their Swords in their Hands, than be hanged.

Capt. *Walcot* demanding, If the Witneſs ever heard him ſay any thing of aſſaſſinating the King? *Bourn* anſwered, He never did; but the Diſcourſe was about ſecuring the King when Capt. *Walcot* was there; though it was ſaid, at ſeveral Meetings, *There was no Way like lopping them*; by which they underſtood, the taking off the King and Duke of *York:*

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West's *Evidence.*

That was the uſual Phraſe; and he ſuppoſed the Captain had heard it.

Mr. *Weſt* being ſworn, depoſed, That one Morning Capt. *Walcot* came to his Chamber, and diſcourſing of the Election of the Sheriffs in the City, carried on contrary to Juſtice, as they thought, the Captain ſaid, *Will People do nothing to ſecure themſelves?* Adding, *There was an Inſurrection deſigned within three Weeks or a Month, that would make us free, or worſe.* A little after, the Captain told him that he was engaged in ſuch a Deſign; and Lord *Shaftesbury* had engaged him in it: That he expected to be a Colonel of Horſe; and asked the Deponent. If he would have a Command under him? And that he told him then, to the beſt of his Remembrance, that Lord *Shaftesbury* had another Deſign upon the King and Duke, as they came from *New-market* in *October*; but he abhorred any ſuch Thing; and would only be concerned in the general Inſurrection: And he asked the Deponent to lend him a Suit of Silk Armour he bought about four or five Years before, when the Popiſh Plot broke out. That he deſired the Deponent alſo to provide him a good ſtiff Tuck, which he did.

That he underſtood the Deſign was put off by the Failure of Mr. *Trenchard*, who had, about a Fortnight before, talked of great Forces he could raiſe in the Weſt; but the Duke of *Monmouth* ſending for him, his Heart failed him, and he ſaid he could not raiſe any Men; upon which my Lord *Grey* called him Coxcomb. This was about the 19th of *November*.

That after this he underſtood, by Captain *Walcot*, that *Ferguſon* had the Conduct of the Aſſaſſination intended in *October*; and when that Deſign had miſcarried, to the beſt of his Remembrance, Capt. *Walcot* told him, there was another Deſign of attacking the King and the Duke at my Lord Mayor's Feaſt in the Hall, or in their Return home in *Paul's Church-Yard*, or at *Ludgate*; and Mr. *Ferguſon* told him the ſame thing: But the King not dining there, they were diſappointed. At other times it was propoſed to do it as the King and Duke went down the River; or at the Play-houſe; or coming from thence: And Colonel *Rumſey* ſaid, He wondered the Lords and Great Men who were ſo fond of the Thing, did not raiſe a Purſe, and buy ſomebody an Office, who ſhould rail at the Duke of *Monmouth* and the Whigs, and by that Means find an Opportunity of getting Acceſs to the King's Perſon. After theſe Diſcourſes, when Lord *Shaftesbury* retired to *Holland*, Mr. *Ferguſon* did ſo too, and Capt. *Walcot* with them. After Capt. *Walcot* and *Ferguſon* returned from *Holland*, the Captain did ſay, at the Deponent's Chamber, he was to command the Party of Horſe that were to attack the Guards at *Rumbold*'s Houſe: They were to lie there perdue, till the King came juſt down upon them; and there being a Gate to paſs through, it was to be ſhut upon the Horſe-Guards, that they could not come to his Relief; and *Rumbold* ſaid he would bring them off over the Meadows by *Hackney-Marſh:* But the Method the Captain approved of was, to retire within the Wall, and there remain till Night, it being a Place they could defend againſt any Force for a Day's time. And here he remembered, that at his firſt Diſcourſe with Capt. *Walcot* in *November*, the Captain told him, Lord *Shaftesbury* was preparing a Declaration to be publiſhed in Caſe of an Aſſaſſination or Inſurrection; and would have ſeveral People employed in drawing it, that they might pick one good one out of them all: And that the Captain ſhewed him a Paper, which was a Collection of all the Paſſages in the Reign of King *James* I. *Charles* I. and his preſent Majeſty's, which he called, *Attempts to introduce arbitrary Power; and concluded with charging them with ſome perſonal Vices; declaring, that the Government was diſolved, and they were free to ſettle another Government.*

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That after their Diſappointment by the Fire at *New-market*, the Conſpirators, among whom was Capt. *Walcot*, met at the Deponent's Chamber, and conſulted how it might be done another Day: But it being ſaid the King would be at home next Day, it was laid aſide. That they met next Week (not at his Chamber, Colonel *Rumſey* was miſtaken in that) but at the *George and Vulture*; and diſcourſing of the late Diſappointment, it was obſerved, one Reaſon of it was, becauſe they had not Arms in Readineſs; and they agreed, that ten Blunderbuſſes, twenty or twenty-two Inches in the Barrel; thirty Carabines, twenty-eight Inches; and thirty Caſes of Piſtols, fourteen Inches, ſhould be bought; and the Deponent was put upon providing them, becauſe he had a Pretence for it, having a Plantation in *Carolina:* That he bought the Arms accordingly, and Mr. *Ferguſon* paid him for them a great while after. That it was agreed, the Lord Mayor and Sheriffs, and as many of the Lieutenancy as they could take, ſhould be killed; and the principal Miniſters of State, particularly the Lords *Halifax* and *Rocheſter*, and the Lord Keeper: Theſe they would hang for the Murder of *Colledge*, on the ſame Poſt he was hanged. That Sir *John Moore* was to be hung up in *Guild-Hall:* Their Lordſhips the Judges were to be flead and ſtuffed, and hung up in *Weſtminſter-Hall*; and *ſeveral of the Penſionary Parliament were to be hanged, as Betrayers of the Peoples Rights.*

The Attorney-General demanding, If *Walcot* was preſent at theſe Diſcourſes? *Weſt* anſwered, He was not at his Chamber ſo often as the reſt; but he was there ſometimes, when theſe Things were diſcourſed of: And that upon the News of the Fire at *New-market*, the Captain ſaid, *I believe God ſhews his Diſapprobation of the Thing:* And *Ferguſon* anſwered, *I believe he reſerves them for worſe Puniſhment:* And the Captain ſaying, he deſired his Name might be concealed; *Ferguſon* anſwered, *Why ſhould you be aſhamed? It is a glorious Action; ſuch an Action as I hope to ſee publickly rewarded by Parliament. I queſtion not but you will be famed for it; and Statues erected for you, with the Title of* LIBERATORES PATRIÆ.

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That *Ferguſon*, who was an Independant Parſon, ſaid, He had told ſome Nonconformiſt Miniſters of it, and they deſired him to forbear; they were a ſilly Sort of People, he ſaid, and did not know how to diſtinguiſh between killing a Prince for Difference of Opinion in Relation, and deſtroying a Tyrant for Preſervation of the Rights and Liberties of the People.----It was an Action, he ſaid, would make all the Princes in the World tremble, and teach them to uſe their Subjects kindly.

It being demanded, What they ſhould do with the King's Natural Sons? *Ferguſon* anſwered, They were good luſty Lads, they would keep them for Porters and Watermen: And as to Lady *Anne* (afterwards Queen *Anne*) they might marry her to ſome Country Gentleman, for a Breed to keep out Foreign Pretenders.

Weſt further depoſed, That there was a Treaty between the *Scots* and Chiefs of the Faction in *England:* And that the *Scots* inſiſted on ten thouſand Pounds to buy Arms, but came down at laſt to five thouſand; and the Earl of *Argyle* was to command them: But this Treaty was broke off, becauſe the *Scots* would not declare at firſt for a Commonwealth, the extirpating of Monarchy, and the Family of the *Stuarts*. That at a meeting at the *Young Devil-Tavern*, where *Walcot*, the Priſoner, was preſent, *Halloway* propoſed, ſince the *Scotch* Buſineſs was at a Stand, they ſhould try what Forces they could raiſe in *England:* And *Ferguſon* ſaid, He believed, if three thouſand Men could be had, the Duke of *Monmouth* and Lord *Ruſſel* would appear at the Head of them. That the City was to be divided into twenty Parts, as the other Witneſſes had depoſed: And that *Lobb* (an Independant Preacher) ſaid, he would try what his Congregation would do. That after they had an Intimation of the Diſcovery of the Conſpiracy, they procured *Keeling* to come to one of their Meetings in the City, and there *Rumbold* charged him with betraying them; and he uſed a great many Imprecations, denying he had made any Diſcovery: Then they had ſome Diſcourſe of killing him, and others propoſed his going out of Town; but he refuſed to go. And had not *Keeling* deceived them by his Proteſtations at the Tavern, he had been killed there. *Wade* ſaid at this time, If the Duke of *Monmouth* would go into the Weſt, they might try a Puſh for it: *Walcot* anſwered, He was ſatisfied God would deliver the Nation, though he did not approve of the preſent Inſtruments.

Walcot *confeſſes and offers to be an Evidence.*

Mr. *Blathwait* being ſworn, depoſed That, *Walcot*, the Priſoner, after the Diſcovery of the Conſpiracy, ſent a Letter to Mr. Secretary *Jenkins*, wherein he acknowledged his Guilt; laid himſelf at his Majeſty's Feet, and promiſed to diſcover all he knew relating to the Plot in *England*, *Scotland*, and *Ireland:* ſaid, That his Intimacy with a *Scotch* Miniſter occaſioned his knowing very much; and aſſured his Majeſty, the Buſineſs (the Conſpiracy) was laid very broad. 1683. 35 Car. II.

His Defence.

Capt. *Walcot*, in his Defence, ſaid, That he was not ſuch a Natural and a Fool, to think that if he charged the Guards, while another killed the King, he was leſs guilty than the Man that killed him: And as to the aſſaſſinating his Majeſty, it never entered into his Thoughts. Here were four Gentlemen, Witneſſes againſt him, who, by their own Confeſſion, were guilty; and to wipe off their own Stains, were reſolved to ſwear him out of his Life: That Mr. *Weſt* had told a long Story, ſometimes naming one Gentleman, and ſometimes another; and he was afraid the Jury might apply it all to him who was leaſt concerned, for he had the Gout all that Month the King was at *Newmarket*, and Mr. *Weſt* came to ſee him ſeveral times: He was not able to draw on a Boot; and was never out of his Lodgings but once, when he went to *Stepney* to dip his Foot in the Wells there.

Another partial Confeſſion.

He acknowledged he had been at ſome Conſults, and knew of an Inſurrection that was intended; which he held was but Miſpriſon of Treaſon, as he was to have no Hand in it; and abſolutely denied he knew of any Deſign againſt the King's Life.

The Chief Juſtice demanding, What he did in *England*, when his Dwelling was in *Ireland?* The Priſoner anſwered, He was invited over by Lord *Shaftesbury*, to go Governor to *Carolina*; but that Poſt being diſpoſed of to another before he came, he went with Lord *Shaftesbury* to *Holland*; and when that Lord died, he returned to *London*, where he fell ill of the Gout: And this, and the making ſome Proviſion for his Children, occaſioned his Stay in Town.

The Chief Juſtice directs the Jury.

The Chief Juſtice then proceeded to direct the Jury: And obſerved, *That the Priſoner confeſſed his having been at ſeveral treaſonable Conſults; and that the being at ſuch Conſults, and meeting for that Purpoſe, was down-right Treaſon, and not Miſpriſon of Treaſon*, as the Priſoner apprehended. There was no Doubt but the meeting ſeveral times upon this Deſign, and concealing it, was Treaſon, though it had not been proved he ſaid any thing there; but that in Truth, the Proof was ſtronger than could have been expected in ſuch a Caſe. Whereupon the Jury, after a very ſhort Receſs, brought in the Priſoner GUILTY.

He is convicted.

1683. 35 Car. II.

The Trial of WILLIAM HONE, for *High-Treaſon*, at the *Old-Baily*, *London*, the ſame 12th and 14th of *July*, 1683. 35 *Car*, II.

1683. 35 Car. II.

Hone's *Trial.*

The Indictment.

THE Indictment charged the Priſoner with Compaſſing and Conſpiring the Death of the King; to ſubvert the Government, and raiſe a Rebellion: And with meeting and Conſulting with other Traitors; and providing Arms for that Purpoſe.

The

1683. 35 Car. II.

The Priſoner pleading *guilty*, The Chief Juſtice demanded, What Part he was to have acted in this Matter? The Priſoner anſwered, Mr. *Richard Goodenough* deſired him to go with him; and he *(Hone)* asking, Whither? *Goodenough* would not tell him the Place; but *he underſtood it was to kill the King and the Duke of* York.

Hone confeſſes he conſented to murder the King.

Mr. Serjeant *Jefferies* ſaid, Since he did not confeſs fully, he deſired he might be tried; and accordingly the Jury were ſworn; And *Keeling* depoſed, That the firſt Time he ſaw the Priſoner, was at the *Dolphin-Tavern*, when Arms were agreed upon; and they diſcourſed of the King's coming from *Newmarket:* And *Rumbold* demanded how many Swan-quills, Gooſe-quills, *&c.* would be wanting: The Priſoner muſt remember the Diſcourſe, for he was by, and heard it all. And that he told this Witneſs, *That he was to be one of them that was to go down to the* Rye, *to aſſaſſinate the King.* And afterwards, at a Coffee-Houſe in *Swithin's-Ally*, the Priſoner ſaid, It would never be well till the *Blackbird* and *Goldfinch* were knocked on the Head, by whom he meant King and the Duke of *York.*

Witneſſes however examined.

Hone anſwered, *As to the Blackbird he owned it*; but he never heard of the *Goldfinch* till then.

Mr. *Weſt* depoſed, That the Priſoner was at the Conſult at the *Dolphin-Tavern*, but did not come in till the Diſcourſe of Arms was over: But that he thought he ſaid, If the Duke of *Monmouth* would be true, and appear, he could bring fifty or ſixty Men from the other Side the Water, to do the Buſineſs. That he was baſely deluded in this Buſineſs, by *Goodenough*, being a pretty honeſt Fellow before.

Here the Court reproved *Weſt* for endeavouring to palliate the Priſoner's Offence: And Serjeant *Jefferies* ſaid, He was not worthy the Mercy the King had ſhewn him.

1683. 35 Car. II.

Sir *Nicholas Butler* depoſed, That the Priſoner and others conſpired to kill the King and the Duke with Croſs-Bows, coming to the Lord Mayor's Show, ſome Years ago; and the Deponent acquainting his Majeſty with it, the Priſoner confeſſed their Deſign: And that, ſince he was taken laſt, he had told him, and ſeveral others, *He was to be one of thoſe that were to kill the King, and was to have twenty Pounds.*

Capt. *Richardſon* depoſed, That he was preſent when Sir *Nicholas* examined the Priſoner, concerning his being in the Conſpiracy to kill the King and the Duke; and the Priſoner confeſſed he was to be one of them: And he ſaid he was for killing the King, and ſaving the Duke; but *Goodenough* was for both. That he told them alſo the whole Buſineſs of the *Rye*; and ſaid, he did not know the Houſe; but it was the Place where the King was to be murdered. He was not willing at firſt to ſtir in it; but *Goodenough* promiſed him twenty Pounds; and confeſſed what Sir *Nicholas* had teſtified of the Croſs-Bows.

The Chief Juſtice demanding, *What he had to ſay, as to his undertaking to kill the King? He anſwered, He was drawn into it by Mr.* Goodenough. But that he had never any Deſign to kill the King by Croſs-Bows; but was only told another had ſuch a Deſign, with which he acquainted Sir *Nicholas.*

The Chief Juſtice demanding, What Religion he was of? He anſwered, He heard ſeveral Sorts of Men; ſometimes Baptiſts, ſometimes Independants, and at others, Preſbyterians.

Then the Chief Juſtice obſerving there was full Evidence againſt him, the Jury found him GUILTY, without going from the Bar.

Hone convicted.

The Trial of JOHN ROUSE, for *High-Treaſon*, at the *Old-Baily, London*, the 13th of *July*, 1683. 35 *Car.* II.

1683. 35 Car. II.

Rouſe's Trial.

The Indictment.

THE Indictment charges the Priſoner with Compaſſing and Conſpiring the Death of the King, and the Subverſion of the Government; and to that End meeting and conſulting with other Traitors to provide Arms, ſeize the *Tower*, *&c.*

Leigh's Evidence againſt him.

Rouſe being brought upon his Trial, *Thomas Leigh*, a Dyer, was ſworn as an Evidence againſt him; and depoſed, That in *June* laſt the Priſoner carried him to a Club of the Conſpirators at the *King*'s-*Head* Tavern in *Swithins-Alley:* That *Goodenough* was there, and acquainted the Deponent with the Deſign to ſet up the Duke of *Monmouth*, and kill the King and Duke of *York:* That he (the Witneſs) acquainted the Priſoner with what *Goodenough* ſaid; but he found he knew it before. And the Priſoner told this Witneſs, he could provide Arms for an hundred Men; but ſaid, nothing was to be done, unleſs the King was ſeized; for they remembred Forty-one, when the King ſet up his Standard: *Therefore* (ſays the Priſoner) *We will ſeize them, that they ſhall not ſet up their Standard:* But he was not for ſhedding their Blood.

That the Priſoner alſo propoſed the playing for a Golden Ball upon *Black-Heath*; and he would engage ten Sea-Captains to manage that Affair; ſo that, when the Play was over, every Captain ſhould take his Party, and go with Long-Boats, and Arms, and ſeize the *Tower:* And ſeveral ſuch Diſcourſes the Priſoner had with ſeveral Men, at the *King*'s-*Head* Tavern, in the hearing of the Deponent.

That after Oath was made of the Deponent's being in the Conſpiracy, he lay at the Priſoner's Houſe, who cut off his Hair, and gave him a Wig, to diſguiſe him; and that he, the Priſoner, and Mate *Lee*, went ſeveral Times to view the *Tower*; and Mate *Lee* ſaying, he would undertake to attack the *Tower* at *Traitors-Bridge*, with an hundered Grena-

1683. 35 Car. II.

diers, Mr. *Rouſe* ſaid, he had been at *Wapping*, and ſpoke with ſome Sea-Captains, and they were ready to undertake the Work.

That the Priſoner bid the Deponent not be diſcouraged, becauſe Warrants were out againſt him; and entertained him well, while he was at his Houſe; and they had ſeveral Meetings at Mr. *Blague*'s, and elſewhere: And he was aſſured they had a Thouſand Horſe ready in the Country, and Five Hundred in *London:* and that they contrived to ſend them Arms in Trunks to private Houſes, and were to arm themſelves in the Night-time, propoſing to ſet upon the King and Duke, as they came from *Windſor*; for they were both to be taken off. *Rouſe* ſaid, *Take them off, and then no Man can have a Commiſſion to fight for them:* Adding, that the King had been ſworn in *France* and *Spain*, to bring in Popery and Arbitrary Power, in ſo many Years; and therefore it was no Sin to take him off.

The Priſoner demanded, whether ever he ſpoke to the Witneſs, of a Deſign againſt the King and Government, and where? And whether the Witneſs did not begin the Diſcourſe?

Leigh anſwered, He could not be poſitive, whether *Rouſe* came to him, or he to *Rouſe*; or which of them diſcourſed of it firſt: But *Rouſe* was very zealous to get ten Captains, to have the Ball played for, and the *Tower* taken.

Mate *Lee* depoſed, That the Priſoner enquired of him, if he could not get ſome Seamen fit to be Commanders of Ships: And the Deponent demanding, where he would have thoſe Ships? he anſwered, He could have ſome of the King's Men of War, that lay at *Deptford* and *Woolwich*; and that they muſt ſecure both the *Tower* and *Whitehall*, or they could do nothing. And the Deponent ſaying, Where is your Oath of Allegiance then to the King? The Priſoner anſwered, *We will ſecure the King, that he come to no Damage; and he ſhall remain King ſtill:* And deſired to know, if Mr. *Rouſe* had any thing to object to his Evidence; for he ſpoke nothing but Truth: *But the Priſoner did not think fit to ſay any thing to it.*

Thomas Corbin depoſed, That ſome few Days before the Members of the City of *London* went to the Parliament at *Oxford*, the Priſoner ſaid, he foreſaw it would be a very ſhort Seſſions; but theſe frequent Prorogations, and Diſſolutions of the Parliament, would not avail: *For whatever the King had, the Parliament gave him, and might take away when they pleaſed.* And when one bid him have a Care what he ſaid, he replied, *The King hath forfeited his Crown, and has no more Right to it than I have.* And this was the ſame Evidence (the Witneſs declared) he gave in Court, in the Year 1681, *When Grand Juries returned all Bills* IGNORAMUS, *that were preferred againſt the Chiefs of the Faction, for High-Treaſon; and particularly one againſt* Rouſe *the Priſoner.* 1683. 35 Car. II.

Rouſe's Defence.

The Priſoner in his Defence ſaid, That *Leigh* the Dyer came to him ſeveral Times about this Buſineſs; but he oppoſed it: That *Leigh* asking him, whether he would oppoſe a Foreign Invaſion? He (the Priſoner) demanded what he meant? And he ſaid, our Rights and Liberties were invaded, and they only made a Foreign Invaſion a Pretence to hook in People; and, asked, if he did not know the Perſons engaged in the Deſign? Whereupon he concluded *Leigh* was of the Cabal, and was pretty confident there was ſuch a helliſh Deſign; but thanked God he had no Hand in it. That *Leigh* alſo communicated the Deſign of taking the *Tower*, &c. to him, and ſaid they did not want Money; *Goodenough* aſſured him there was 40,000*l.*

The Chief Juſtice here obſerved, That the Priſoner only charged the Witneſs with what had been ſworn againſt himſelf; and that Mate *Lee* was another ſhrewd Evidence againſt him.

Rouſe anſwered, *Leigh* had turned it upon him; but he had nothing to ſay againſt Mate *Lee:* He had a Deſign to diſcover the Thing, and only was led to know the Bottom of it.

The Chief Juſtice demanding of *Leigh*, If he never diſcourſed with *Rouſe*, the Priſoner, of theſe Things in Company? *Leigh* anſwered, They uſed to diſcourſe ſingly with one Man at a Time. *Rouſe* and *Goodenough* went into a Room, and diſcourſed of theſe Things half an Hour.

The Chief Juſtice asking how he knew what Diſcourſe they had? *Leigh* anſwered, *Rouſe* told him.

Rouſe asked *Leigh*, What he ſaid when he was told one had ſworn againſt him? *Leigh* anſwered, When he heard *Keeling* had ſworn againſt him, he ſaid, if he did light of *Keeling*, he would kill him.

The Chief Juſtice demanded of the Priſoner, What he meant by putting Mate *Lee* upon enquiring out Men to make Maſters of Ships? *Rouſe* anſwered, To get at the Bottom of the Deſign, that his Majeſty might come to no Damage.

Rouſe convicted.

Then the King's Counſel obſerved, That the Priſoner had confeſſed Treaſon enough to convict him; and the Chief Juſtice having ſummed up the Evidence, the Jury found him GUILTY, without much Deliberation.

The Trial of Captain WILLIAM BLAGUE, for *High-Treaſon*, at the *Old-Baily*, *London*, *July* the 13th, 1683. 35 *Car.* II.

1683. 35 Car. II.

Blague's *Trial.*

The Indictment.

THE Indictment was of the ſame Tenor, as the former againſt *Rouſe*, charging the Priſoner with compaſſing and conſpiring the King's Death, the Subverſion of the Government, &c.

Leigh, the Dyer, depoſed, That Captain *Blague* was at ſeveral Conſultations about ſeizing the *Tower*, and had promiſed to aſſiſt at it with his own Ship: But Mate *Lee*, the other Witneſs, not atteſting any thing poſitively againſt the Priſoner, he was acquitted, by the Direction of the Chief Juſtice.

He is acquitted, there being but one poſitive Witneſs.

The Remarks of the Trials of the Rye-Houſe *Conſpirators will be found at the End of the Lord* Ruſſell's *Trial.*

The

1683. 35 Car. II. *Lord Ruſſel's Trial.*

The Trial of WILLIAM RUSSEL, Eſq; (uſually called Lord RUSSEL) for *High-Treaſon*, at the *Old-Baily London*, the 13th of *July*, 1683. 35 *Car.* II.

1683. 35 Car. II.

The Indictment.

THE Indictment ſet forth, That *William Ruſſel*, late of *London*, Eſq; on the ſecond Day of *November*, in the 34th Year of his preſent Majeſty King *Charles* II. and divers other Days and Times, as well before as after, at the Pariſh of St *Michael Baſſiſhaw*, in the Ward of *Baſſiſhaw*, *London*, did maliciouſly, and traitorouſly, with divers other Traitors, conſpire, compaſs, imagine and intend, not only the ſaid King, his Supreme Lord, of his State, Title, Pow- and Government, to deprive; but his ſaid Lord the King to kill, and put to Death, and the ancient Government of this his Kingdom of *England* to change, and wholly ſubvert; and a miſerable Slaughter of the ſaid King's Subjects to cauſe and procure; and Inſurrection and Rebellion againſt our ſaid Lord the King, to move and ſtir up: And to accompliſh the ſaid horrible Treaſons, traitorous Compaſſings, Imaginations and Purpoſes, He, the ſaid *William Ruſſel*, with other falſe Traitors, *did meet, conſult, and conclude, Inſurrection and Rebellion againſt our ſaid Lord the King, within this Kingdom of* England, *to move and ſtir up: And the Guards for the Preſervation of the King's Perſon, to ſeize and deſtroy.*

My Lord *Ruſſel* being arraigned, and pleading not Guilty, moved to put off his Trial, alledging, he thought a Priſoner had never been arraigned and tried at the ſame Time; ſuggeſting that he had been a cloſe Priſoner, and had no Opportunity of preparing for his Defence.

The Chief Juſtice, Sir *Edmond Saunders*, anſwered, It was uſual, for Crimes of this Nature, to arraign and try the Priſoner the ſame Day.

Sir *Robert Sawyer*, the Attorney-General, alſo obſerved, That his Lordſhip had no Reaſon to complain for want of Notice; Becauſe he had Notice given him of his Trial the *Monday* Seven-Night before and the Matters he was charged with: That he had had the Liberty of Counſel to adviſe him, and no ſort of Liberty denied him, which was fit for a Subject to have in his Condition. And the Chief Juſtice ſaid, Theſe were Privileges never before granted to any Man in his Lordſhip's Circumſtances.

Lord *Ruſſel* replied, There were only ſome general Queſtions put to him; and that he had ſome Witneſſes that could not be in Town till Night; and therefore thought it hard he could not have one Day more.

The Attorney-General ſtill averred, The Priſoner did know the Matter, he was charged with, the *Monday* Seven-night before; for he himſelf, he ſaid, was with his Lordſhip, and heard him examined to thoſe Points.

My Lord *Ruſſel* then ſaid, He had not had a Copy of the Pannel: To which the Court anſwered, He had had a Copy of the Names of the Perſons intended to appear as Jurors, and there could no other Copy be given him; for the Priſoner might challenge 35, and therefore there was generally a Return of Three or Fourſcore. This was not like a Pannel made up by the Sheriff, in ordinary Caſes, between Man and Man, from whence they could not depart when it was once returned; and if they were to give him a new Liſt of Names, they could only give him ſuch another.

Then the Priſoner deſired that his Trial might be put off till the Afternoon, which the Chief Juſtice ſeemed inclined to; but Mr Attorney inſiſting that he ſhould be tried immediately, the Chief Juſtice ſaid, He could not put it off, without the Conſent of the King's Counſel.

The Clerk proceeding to call the Jury, his Lordſhip deſired he might have Pen, Ink, and Paper, and that he might make uſe of ſuch Papers as he brought into Court with him; which was granted.

He alſo deſired he might have one to write for him, and aſſiſt his Memory; and the Attorney-General anſwered, he might have two. My Lord ſaid his Wife was there, and would do it: The Chief Juſtice anſwered, his Lady might, if ſhe would give herſelf the Trouble.

Challenge for want of Freehold over-ruled.

John Martin being called to ſerve on the Jury, the Lord *Ruſſel* challenged him, objecting that he had not Forty Shillings a Year Freehold, and therefore could not ſerve: Which Point his Counſel, Mr. *Pollexfen*, Mr. *Holt*, and Mr. *Ward*, were permitted to argue, and were anſwered by the King's Counſel; and the Challenge was over-ruled by all the Judges on the Bench, being ſeven in Number; for that at common Law, the want of Freehold was no Exception in a City; and the Statute of 1 *Mary* declared, that all Trials for Treaſon ſhould be according to the common Law: Nor had this Challenge, for want of Freehold, been ever allowed in the City.

The Lord *Ruſſel* afterwards challenged one and thirty peremptorily, and the following Jury were ſworn.

The Jury.

John Martin,	*William Butler*,
William Rouſe,	*James Pickering*,
Jervis Seaton,	*Thomas Jeve*,
William Faſhion,	*Hugh Noden*,
Thomas Short,	*Robert Brough*,
George Torriano,	*Thomas Oneby.*

Mr. Attorney opens the Evidence.

Mr. Attorney-General, in opening the Indictment and the Evidence, obſerved, That the Lord *Ruſſel*, the Duke of *Monmouth*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*,

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Ferguſon, were a kind of Council of State, to direct and manage the general Riſing, that was intended on the 17th of *November*, then laſt paſt: That theſe Gentlemen had frequent Meetings in *October* and *November*, and there conſulted how to manage the Inſurrection, and to ſeize the King's Guards; That at ſeveral Meetings they received Meſſages from Lord *Shaftesbury*, concerning theſe Riſings; but not being able to prepare Matters againſt the Day appointed, Lord *Shaftesbury* went over to *Holland*, and *Ferguſon* with him; Whereupon their Council was new modeled, Sir *Thomas Armſtrong* was left out, as was alſo the Lord *Grey*; *for they put on the Face of Religion*; and my Lord *Grey* was eſteemed ſo ſcandalous, (on Account of his living in Adultery with his Lady's Siſter) that they were aſſured his being one of them would leſſen their Reputation among the Saints.

The Council of Six.

The Members of this new Council were, the Lord *Ruſſel*, the Duke of *Monmouth*, Lord *Howard*, the Lord *Eſſex* (who had that Morning prevented the Hand of Juſtice,) Colonel *Sidney*, and Mr. *Hampden*. This was the great Council, that moved all the reſt; and they met frequently at the Lord *Ruſſel*'s Houſe, to prepare Things for an Inſurrection. There was alſo an inferior Council, or Cabal, conſiſting of Seven, who managed the Buſineſs of the Aſſaſſination.

That it was determined, by the firſt Council, That before they fixed upon a Time for the Inſurrection in *England*, they ſhould get Intelligence of the Time and Method of the intended Riſing in *Scotland*; and thereupon *Aaron Smith* was diſpatched to that Kingdom, to invite the *Scots* to act in Concert with them; and ſeveral Perſons came from *Scotland*, to treat with the Conſpirators here, who demanded 30000 *l.* to enable them to make a Diverſion here: However they fell in their Demands to 10000 *l.* and at laſt to 5000 *l.* But the Treaty was broke off the very Week the Plot was diſcovered.

Colonel Rumſey's Evidence.

Then the Witneſſes were called, and firſt Colonel *Rumſey* was ſworn, who depoſed, That he was at Lord *Shaftesbury*'s Lodgings in *Wapping*, the latter End of *October*, or the Beginning of *November* laſt, and his Lordſhip told him, there were met at Mr. *Shepherd*'s Houſe, the Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*; and that he deſired him (the Witneſs) to ſpeak to them, and know what Reſolution they were come to, about the Riſing at *Taunton*. That he went to them accordingly; and their Anſwer was, That Mr. *Trenchard* had failed them, who had promiſed to raiſe a Thouſand Foot, and three hundred Horſe, but could not perform it; and his Lordſhip muſt be content. The Chief Juſtice demanding, who gave this Anſwer? he anſwered, Mr. *Ferguſon* ſpoke moſt of it, though he thought Lord *Grey* ſaid ſomething to the ſame Purpoſe; the Lord *Ruſſel*, and Duke of *Monmouth*, being preſent.

It being demanded of Colonel *Rumſey*, If there was any Diſcourſe happened, while he was at Mr. *Shepherd*'s? he anſwered There was ſome Diſcourſe about ſeeing what Poſture the Guards were in, that they might ſurprize them. And being asked, If it was diſcourſed by *all* the Company? he anſwered, *All the Company did debate it:* And he thought the Duke of *Monmouth*, Lord *Grey*, and Sir *Thomas Armſtrong*, undertook to view them, *it being intended to ſurprize them, if the Riſing went on.*

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The Attorney-General asked, if he (the Witneſs) was to be concerned in the Riſing? The Colonel anſwered, Yes, he was engaged in it by Lord *Shaftesbury*, and was to have gone down to *Briſtol*.

Mr. Serjeant *Jefferies* demanding, whether the Priſoner was averſe to, or agreeing to their Reſolution? Colonel *Rumſey* anſwered, *agreeing to it*. The Court asking, What my Lord *Shaftesbury* ſaid, when he carried back their Anſwer? the Colonel anſwered, He ſaid he would be gone, and accordingly did go: And that this was about a Fortnight before the Time appointed for the Riſing.

The Court then told the Lord *Ruſſel*, he might ask the Witneſs any Queſtions.

His Lordſhip anſwered, He knew little of the Matter; it was the greateſt Accident in the World he was there, and when he ſaw what Company was there, he would have been gone again: But there was no Diſcourſe of ſurpriſing the Guards, or undertaking to raiſe an Army: And deſired to know if he gave any Anſwer about the Riſing. And the Chief Juſtice demanded of the Witneſs, If my Lord *Ruſſel* ſaid any thing there, and What? the Colonel anſwered, *The Lord* Ruſſel *did diſcourſe of the riſing at* Taunton.

The Chief Juſtice then demanded, *If Lord* Ruſſel *gave his conſent to the riſing?* Colonel *Rumſey* anſwered, *Yes, my Lord, he did.*

Then Mr. *Shepherd*, a Merchant in *Abchurch-Lane*, at whoſe Houſe the Conſultation was held, was ſworn.

Shepherd's Evidence.

He depoſed, That in *October* laſt, Mr. *Ferguſon* came to him, in the Duke of *Monmouth*'s Name, and deſired the Conveniency of his Houſe, for him and ſome other Perſons of Quality to meet there: And as ſoon as he had granted it, in the Evening, the Duke of *Monmouth*, Lord *Grey*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and Mr. *Ferguſon*, came in: And Sir *Thomas Armſtrong* deſired that none of his Servants might come up; but they might be private: So he (the Witneſs) went down for Wine, and what they wanted: *That the Subſtance of their Diſcourſe was, to ſurprize the Guards; and in order to that, the Duke of* Monmouth, *Lord* Grey, *and Sir* Thomas Armſtrong, *went one Night to the* Mews, *or thereabout to view the Guards,* as he remembred. *And the next Time they came to his Houſe, he heard Sir* Thomas Armſtrong *ſay, the Guards were very remiſs, and not like Soldiers; and the Thing was very feaſible, if they had Strength to do it.*

It being demanded, if they met by chance, or the Witneſs had Notice of it? Mr. *Shepherd* anſwered, He had Notice that the Duke of *Monmouth*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, would be there:

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That they did not come together, but one after another; and he did not know whether they came in their Coaches, or on Foot.

Mr. Serjeant *Jefferies* demanding, *If my Lord* Ruſſel *was there both Times? Mr.* Shepherd *anſwered, Yes, as he remembred.* And being asked, If Lord *Ruſſel* had any particular Buſineſs with him? He anſwered, No, not at that Time; but ſince he had, about the Affairs of Lord *Shaftesbury*. Being asked, If any Paper was read at that Time? He ſaid *Somewhat was read, in the Nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing.* He would not ſay Lord *Ruſſel* was there then; but he was, when they talked of ſeizing the Guards. - - - The Chief Juſtice demanded again, *If the Lord* Ruſſel *was preſent at both the Meetings?* Mr. *Shepherd* anſwered, *I think ſo; but it was eight or nine Months ago, and I cannot be poſitive.*

The Lord *Howard* being ſworn next, Mr. Attorney demanded, What he knew of the Riſing deſigned before the Lord *Shaftesbury*, went away; and how it was continued on?

Lord Howard's Evidence.

His Lordſhip having obſerved the Ferment the Town was in at the Election of Sheriffs, ſeems to date the Original of the Plot from thence: And then gives an Account of his introducing Capt. *Walcot* to Lord *Shaftesbury*, and his attending Lord *Shaftesbury* when he abſconded; who complained to him, he ſaid, that their Deſigns were much obſtructed by the unhandſome Deportment of the Duke of *Monmouth* and Lord *Ruſſel*; who had not only withdrawn themſelves from his Aſſiſtance, but acted contrary to their Engagements; for when he had got ſuch a formed Force in *London*, and expected to have it anſwered by them in the Country, They told him they were not in a Condition to concur with him; which he looked upon as an Excuſe, and an Inſtance of their Intentions to deſert him. However, there were ſuch Preparations made in *London*, that if they were willing to *loſe the Honour* of concurring with him, he ſhould be able to do it himſelf, and intended ſpeedily to put his Deſign in Execution: *There were ten thouſand briſk Boys, ready to follow him whenever he held up his Finger.* - - - - That he (Lord *Howard*) went to *Moor-Park* to the Duke of *Monmouth*, and acquainted him with Lord *Shaftesbury*'s Complaints: And the Duke anſwered, He thought he was mad. He was ſo far from giving him Encouragement, that he told him from the beginning, and ſo did Lord *Ruſſel*, There was nothing to be done by them in the Country at that time. That he returned to Lord *Shaftesbury*, and told him, the Duke diſowned they ever gave him any Encouragement: And *Shaftesbury* anſwered, It was falſe; and he had Reaſon to believe, *There was ſome artificial Bargain between his Father and him, to ſave one another:* They had different Proſpects. *We*, ſays he, *are for a Commonwealth; and he has no Deſign but his own Perſonal Intereſt, and that will not go down with my People.* That the Duke of *Monmouth* afterwards told him (Lord *Howard*) that the Lord *Ruſſel* had been with Lord *Shaftesbury*, and put off the Day of Rendezvous, upon Condition that thoſe Lords, and ſome others, ſhould be in a Readineſs to raiſe the Country within a Fortnight after: And, *That the Duke added, He had been at* Wapping *all Night, and never ſaw a Company of bolder and briſker Fellows in his Life.* That he had alſo viewed the Avenues to the *Tower*, and did not think it difficult to poſſeſs themſelves of it.

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Here the Lord *Ruſſel* complained he had very hard Meaſure, that ſo much Hear-ſay Evidence was given.

Whereupon the Chief Juſtice declared to the Jury, That this did not affect his Lordſhip.

Lord *Howard* proceeded in his Evidence, and ſaid, About the 17th or 18th of *October* laſt, *Capt.* Walcot *told him, they were poſitively reſolved to riſe; and did believe, that a ſmart Party might meet ſome great Men:* Whereupon he acquainted the Duke of *Monmouth* there was ſome dark Intimation of an Attempt upon the King's Perſon: And the Duke thereupon ſtruck his Breaſt, and with great Emotion, ſaid, *God-ſo, kill the King! I will never ſuffer them.* That the Day the King came from *New-market*, they had a Notion conveyed amongſt them, that there was a Deſign upon the King: And Lord *Grey* ſaid, *By God, if they do attempt ſuch a Thing, they cannot fail.* And they were in great Anxiety of Mind, till they heard the King's Coach was come in.

This failing, it was next reſolved to be done on the Anniverſary of Queen *Elizabeth*, the 17th of *November:* Which failing alſo, by their not being ready in the Country, Lord *Shaftesbury* took Shipping and got away; and from that Time he (Lord *Howard*) heard no more of Lord *Shaftesbury* till he died.

After this, they conſidered they had gone ſo far, and communicated the Affair to ſo many, that there was no retreating; and that to manage ſo great a Deſign, a general Council was neceſſary to take care of the Whole: About the Middle of laſt *January* therefore they conſtituted a Cabal, conſiſting of ſix Perſons; namely, The Duke of *Monmouth*, Lord *Eſſex*, Lord *Ruſſel*, Mr. *Hampden*, jun. *Algernon Sidney*, and himſelf (Lord *Howard*), who met about the ſame time at Mr. *Hampden*'s Houſe, where it was debated, Whether it was moſt proper to begin the Inſurrection in *London*, or in the Country? And the Duke of *Monmouth* obſerved, That it would be impoſſible to reſiſt a formed Force, with a Rabble haſtily got together; and that, whatever Numbers could be gathered in the City, would be diſperſed before they could form themſelves: Concluding therefore, that it would be better to riſe at ſuch a Diſtance from the Town, as they might have an Opportunity of forming themſelves; and not here, where every ſlight Rumour might intimidate their Friends; and one Half Hour would convey the News to thoſe Forces, that in another Half Hour, would be ready to ſuppreſs them: Whereas, if they ſhould begin at a Diſtance from *London*, the King would be under this *Dilemma*, either to ſend down his Forces, and leave the City naked; or, if he

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Their Debates.

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did not ſend, he would give them an Opportunity of forming themſelves into Bodies in the Country. Then they conſidered, what Towns and Counties were moſt diſpoſed to Action; and what Arms and Money would be wanting: And the laſt and greateſt Conſideration was, How they might draw the *Scots* in to join them.------That about ten Days after, the ſame Perſons had a Meeting at Lord *Ruſſel*'s Houſe; and there it was reſolved to ſend ſome Perſons to Lord *Argyle*, to ſettle a Correſpondence with him, and get Intelligence of the State of *Scotland*, and to invite ſome Perſons hither, that were ſuppoſed to underſtand the Situation of their Affairs: And the Perſons agreed to be invited were, Sir *John Cockram*, Lord *Melvile*, and, as he thought, one of the *Campbels*.

That Colonel *Sidney* had the Care of this Buſineſs; who told him (Lord *Howard*) he had ſent *Aaron Smith* to *Scotland*, and given him ſixty Guineas for his Journey: And they agreed not to meet any more till the Return of that Meſſenger, who was gone near a Month before they heard any thing of him, and they were afraid their Letter had miſcarried: But it could have done no great Hurt, if it had; for it carried only a kind of Cant in it, being under the Diſguiſe of a Plantation in *Carolina*.

Mr. Attorney demanding, *If my Lord* Ruſſel *was at theſe Meetings? Lord* Howard *anſwered, Yes: He wiſhed he could ſay he was not:* And being asked, If he ſat as a Cypher amongſt them, and ſaid nothing? Lord *Howard* anſwered, Every one knew Lord *Ruſſel* was a Perſon of great Judgment, and not very laviſh in Diſcourſe. And it being asked, If Lord *Ruſſel* conſented? He anſwered, They did not put it to the Vote, it went without Contradiction; and he took it, *That all there gave their Conſent.*

Then the Court told the Priſoner, That was his Time, if he would ask the Witneſs any Queſtions: Whereupon Lord *Ruſſel* ſaid, The moſt this Witneſs had teſtified of him, was only Hear-ſay; *The two times they met was upon no formed Deſign; only to talk of News, and Things in general.*

The Court replied, He teſtified, that after Lord *Shaftesbury* went off, the Party concerned with him, made Choice of the Duke of *Monmouth*, Lord *Ruſſel*, *&c.* to carry on the Deſign of an Inſurrection, or Riſing in the Kingdom.

The Lord *Ruſſel* asked, By what Party that Council was choſen, for he knew of no Party? Lord *Howard* anſwered, *They erected themſelves into this Society, by mutual Agreement.* Lord *Ruſſel* replied, They were People that did meet very often; and though, he ſaid, they met upon a formed Deſign, they met about no ſuch Thing.

Then the Chief Juſtice obſerved, That Lord *Howard* had teſtified, *They did conſult among themſelves about raiſing Men, and where the Riſing ſhould firſt be; whether in* London, *or more diſtant Parts: That they had ſeveral Debates about it; and mentioned ſome of the Duke of* Monmouth's *Arguments for its being begun in Places diſtant from the City. That they did all agree, not to do any thing further, till they had conſidered how to raiſe Money and Arms, and engage the Kingdom of* Scotland *in the Buſineſs: And that it was agreed amongſt them to ſend a Meſſenger to* Scotland. *This Lord* Howard *teſtified, of his own Knowledge.*

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Lord Ruſſel *again acknowledged they met*; but ſaid, there was no Debate of any ſuch Thing, nor putting any Thing in Method; but Lord *Howard* was a Man of a voluble Tongue, talked well, was full of Diſcourſe, and they were delighted to hear him.

Evidence that the Agents invited, came up from Scotland.

Here Mr. Attorney called Mr. *Atterbury*, the Meſſenger, to prove Sir *Hugh Campbell* came up from *Scotland* to *London*, in purſuance of the Meſſage ſent him: And *Atterbury* depoſed, That Sir *Hugh Campbell* was in his Cuſtody, both he and his Son being taken as they were making their Eſcape out of a Woodmonger's Houſe: That Sir *Hugh* acknowledged he had been in Town four Days, and came up with his Son, and one *Bailey*.

Mr. Attorney then called Mr. *Weſt*, and demanded, Whether he, and the reſt of thoſe that intended to riſe, looked upon any of the Lords, above-mentioned, as concerned in it?

Weſt depoſed, That they always ſaid Lord *Ruſſel* was the Man they moſt depended on; becauſe he was a Perſon looked upon as of great Sobriety.

Lord *Ruſſel* anſwered, He could not hinder People from making uſe of his Name; but he thought it hard to have this brought to influence the Jury, and inflame them againſt him.

Mr. Attorney replied, It was not Evidence to convict a Man, if there was not plain Evidence before; but it confirmed what the reſt had ſworn.

Then the Chief Juſtice acquainted the Priſoner, That the King's Counſel had done with their Evidence; and ſaid, he would put him in Mind of the moſt material Things that had been proved againſt him.

The Chief Juſtice puts Lord Ruſſel *in Mind of what had been teſtified againſt him.*

And firſt; That Colonel *Rumſey* had depoſed, he was ſent to them on a traitorous Errand, to know what had been done concerning the deſigned Inſurrection at *Taunton*: And that he (Lord *Ruſſel*) being at that Meeting, Anſwer was made, Mr. *Trenchard* had failed them; and my Lord *Shaftesbury* muſt be contented as to that time. That Mr. *Shepherd* alſo depoſed, his Lordſhip was at that Meeting; and that a Paper was read, purporting a Declaration deſigned to be publiſhed on their Riſing; ſetting forth, the Oppreſſions and Grievances of the Nation. That the Lord *Howard*, after having given a long Account of the Lord *Shaftesbury*'s Deſigns, depoſed, That ſix of them did undertake, as a Council, to manage the intended Inſurrection, and ſurpriſe the King's Guards, which was Rebellion: And depoſed, they had ſeveral Conſults concerning it; and had mentioned ſeveral Particulars debated at thoſe Conſults.

Lord Ruſſel's *Defence.*

The Lord *Ruſſel* then proceeding in his Defence, ſaid, I think myſelf mighty unfortunate to ſtand here, charged with a heinous Crime; and that intermixed with Treaſons, and horrid Practices and Speeches of others; the King's Counſel taking all Advantages, improving

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improving and heightening Things againſt me. I am no Lawyer; a very unready Speaker; a Stranger to Things of this Nature; alone, and without Counſel. I am very ſenſible I am not provided to make a juſt Defence: But my Lord, you are equal; and the Gentlemen of the Jury, I think, are Men of Conſcience: They are Strangers to me, and I hope they value innocent Blood; and will conſider, *That the Witneſſes againſt me ſwear to ſave their own Lives:* However they may be accounted legal Witneſſes, they cannot be credible. For Colonel *Rumſey*, who had been ſo highly obliged by the King and Duke, to be capable of a Deſign to murder the King; I think, no Body will wonder, if, to ſave his own Life, he will endeavour to take away mine. Neither does he ſwear enough to do it; and if he did, the Time, by the 13th of this King, is elapſed; the Proſecution ought to be within ſix Months. And by the 25th of *Edw.* III. a Deſign to levy War was no Treaſon, unleſs ſome Overt-Act appeared: And deſired to know what Statute he was tried upon.

The Attorney-General anſwered, They went upon the 25th of *Edw.* III. And this has been conſtantly ſo adjudged in all Trials ſince the Revolution, *To prepare Forces to fight againſt the King, was a Deſign to kill the King within that Statute: That a Deſign to depoſe the King, to impriſon him, or raiſe his Subjects againſt him, were within that Statute, and Evidences of a Deſign to kill the King.*

Lord *Ruſſel* ſaid, He heard nothing of Col. *Rumſey*'s Meſſage; nor did he ſay he ſpoke to him, or that he gave any Anſwer: And Mr. *Shepherd* remembered nothing of it; ſo there was but one Witneſs, and that would not convict him of Treaſon: Beſides, a Conſpiracy to levy War was no Treaſon; and deſired he might have Counſel to argue that Point.

The Chief Juſtice anſwered, Thus the Law alſo is held to be at this Day: *That it had been reſolved, that there need not be two Witneſſes to the ſame individual Act: If there were ſeveral Acts manifeſting the ſame Treaſon, and one Witneſs to each of them, they were two Witneſſes within the Statute of* Edw. VI. And as to the other Point, Whether a Conſpiracy to levy War was Treaſon? The Fact muſt be admitted, That he had conſulted to levy War, before they could ſpeak to it.

Mr. Attorney obſerved, *That in my Lord* Stafford's *Caſe, there was but one Witneſs to one Act in* England; *and another, to another Act in* France.

Lord *Ruſſel* anſwered, It was to the ſame Point.

Mr. Attorney replied-----To the general Point, the *Lopping Point:* (the taking off the King.)

Then Lord *Ruſſel* demanded again, Whether Col. *Rumſey* could ſwear poſitively that he heard the Meſſage, and gave any Anſwer to it?

Colonel *Rumſey* anſwered, When he came in, they were ſtanding by the Fire ſide; but they all came from the Fire-ſide to hear what he ſaid.

Lord *Ruſſel* then averred, That he came in with the Duke of *Monmouth*, and *Rumſey* was there before: And called Witneſſes to prove, that Lord *Howard* ſaid he knew nothing againſt him; or of any Plot.

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Lord Ruſſel's *Witneſſes.*

And firſt, the Lord *Angleſey* ſtood up and declared, That hearing the Lord *Bedford* was in ſome Affliction for his Son, he made him a Viſit, when my Lord *Howard* came in, and began to comfort my Lord, ſaying, You are happy in a wiſe Son, and a worthy Perſon; one that can never, ſure, be in ſuch a Plot as this, or ſuſpected for it: I know nothing againſt him, or any Body elſe, of ſuch a barbarous Deſign; and therefore your Lordſhip may be comforted in it.

Mr. *Howard* alſo depoſed, That the Lord *Howard*, upon his Honour, his Faith, and with as much Solemnity as if he had taken an Oath before a Magiſtrate, denied he knew of any Man concerned in the Plot; and particularly of my Lord *Ruſſel*, whom he vindicated with all the Honour imaginable; ſaying, He did not only ſuffer unjuſtly, but he thought him the worthieſt Perſon in the World.

Doctor *Burnet* declared, Lord *Howard* was with him the Night after the Plot broke out; and with his Hands and Eyes lift up to Heaven, ſaid, That he knew nothing of any Plot, or believed any; and treated it with great Contempt.

Lord *Cavendiſh* declared, He always thought Lord *Ruſſel* to be a Man of great Honour; too prudent and wary to be concerned in ſo deſperate a Deſign; and had expreſſed ſo ill an Opinion of Colonel *Rumſey*, that it was not likely he would truſt him with ſuch a Secret.

Doctor *Tillotſon* ſaid, He took the Lord *Ruſſel* to be a Perſon of great Virtue and Integrity; and could not but think him very far from any ſuch wicked Deſign.

Doctor *Burnet* and Doctor *Cox* ſaid, They had heard Lord *Ruſſel* declare himſelf againſt all Inſurrections.

The Duke of *Somerſet* ſaid, He had known Lord *Ruſſel* two Years, and never heard any thing from him but what was honourable, loyal, and juſt.

Then the Jury deſired to know, What the Lord *Howard* ſaid, as to what the Lord *Angleſey* teſtified.

Lord Howard *vindicates himſelf.*

Lord *Howard* anſwered, he confeſſed he did frequently ſay there was nothing of Truth in the Plot: He was at that time to out-face the Thing, both for himſelf and his Party; and he did not intend then to have acted this Part.

He did not think that the Religion of an Oath was tied to a Place; but received its Obligation from the Appeal made to God: And if he called God and Angels to witneſs to a Falſhood, he ought not to be believed now: But their Lordſhips knew, *Every Man was committed for a Deſign to murder the King.* And he laid hold on this; for he was to carry his Knife cloſe between the Paring and the Apple. And he did ſay, *If I were an Enemy to my Lord* Ruſſel *and the Duke of* Monmouth, *and were called to be a Witneſs, I muſt have declared, in the Preſence of God and Man, that*

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I did not believe either of them had a Deſign to murder the King.

Several other Witneſſes appeared, and gave Lord *Ruſſel* the Character of a virtuous Man; and good in all Relations.

Lord Ruſſel *concludes his Defence.*

Then the Lord *Ruſſel* concluded his Defence, and ſaid, I declare to your Lordſhip, I have always had a Heart ſincerely loyal and affectionate to the King and Government, the beſt Government in the World. I pray as ſincerely for the King's happy and long Life, as any Man alive: And for me to go about to raiſe a Rebellion, which I looked upon as wicked and impracticable, is very unlikely. I was always for the Government; I never deſired any Thing to be redreſſed, *but in a Parliamentary and Legal Way:* Gentlemen, I am now in yourHands eternally, my Honour, my Life, and all; and I hope the Heats and Animoſities amongſt you, will not ſo byas you as to incline you to find an innocent Man guilty. I call Heaven and Earth to witneſs, I never had a Deſign againſt the King's Life; nor ever ſhall have. I think there is nothing at all proved againſt me: Iam in your Hands; God direct you.

Mr. Solicitor's Obſervations on theEvidence.

The Solicitor-General then proceeded to ſum up the Evidence, and make his Obſervations on it for the King; wherein he ſhewed, That nothing was more common than to indict a Man for conſpiring the Death of the King; and to aſſign a Conſultation for levying War againſt the King, as an Overt-Act orEvidence of it. And that, *a Deſign to bring the King into their Power, till he had conſented to ſuch Things as ſhould be moved in his Parliament, was equally Treaſon, as if they had agreed directly to aſſaſſinate him.* But the reſt of his Argument comprehending only what had been already urged in the Courſe of the Trial, is deſignedly omitted.

The Chief Juſtice's Directions to the Jury.

The Chief Juſtice, in his Directions to the Jury, ſaid, The Queſtion before you will be, Whether, upon the whole Matter, you do believe my Lord *Ruſſel* had any Deſign upon the King's Life? To deſtroy the King or take away his Life? for that is the material Part here. 'Tis uſed, and given you by the King's Counſel, as an Evidence of this, That he did conſpire to raiſe an Inſurrection, and to cauſe a Riſing of the People, to make, *as it were*, a Rebellion within the Nation, and to ſurprize the King's Guards; which, ſay they, can have no other End than to ſeize and deſtroy the King: And 'tis a great Evidence (if my Lord *Ruſſel* did deſign to ſeize the King's Guards, and make an Inſurrection in the Kingdom) of a Deſign to ſurprize the King's Perſon. It muſt be left to you, upon the whole Matter: You have not Evidence in this Caſe, as there was yeſterday againſt the Conſpirators to kill the King at the *Rye:* There was direct Evidence of a Conſult to kill the King; that is not given you in this Caſe; *This is an Act of contriving Rebellion and an Inſurrection within the Kingdom, and to ſeize his Guards, which is urged as an Evidence: And ſurely it is in itſelf an Evidence, to ſeize and deſtroy the King.* Upon this whole Matter, this is left to you: *If you believe the Priſoner at the Bar to have conſpired the Death of the King; and in order to that, to have had theſe Conſults that the Witneſſes ſpeak of, then you muſt find him guilty of this Treaſon that is laid to his Charge.*

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Then the Court adjourned till Four in the Afternoon; when the Jury brought the Lord *Ruſſel* in GUILTY of High-Treaſon. *Lord* Ruſſel *convicted.*

The next Day being *Saturday*, th 14th of *July*, the Lord *Ruſſel* was brought into Court to receive Sentence. And it being demanded of him, What he had to ſay, why Judgment ſhould not paſs upon him? He deſired the Indictment might be read in *Engliſh*; and the Clerk having read the Words which charged him with *conſpiring the King's Death*, He ſaid, he thought he had not been charged with conſpiring the Death of the King; for the Witneſſes had only ſworn a Conſpiracy to levy War againſt him; and therefore he thought Judgment could not paſs upon him for conſpiring the King's Death: To which Mr. Recorder anſwered, That was an Exception proper to be made before Verdict; and he thought he did make it. Whether the Evidence did ſupport the Charge, was proper to be obſerved to the Jury; for if it came ſhort of the Indictment, they could not find it to be a true Charge: but when they had found it, their Verdict paſſed for Truth. *He moves in Arreſt of Judgment.*

The Lord *Ruſſel* replied, He thought it very hard he muſt be condemned upon a Point, that there was not one thing of it ſworn; and therefore thought he might legally demand an Arreſt of Judgment.

The Recorder ſaid, he hoped his Lordſhip would conſider, it was not the Court that could give a Verdict, it muſt be the Jury; and he believed there was no Body in the Court delighted in giving ſuch Judgments, eſpecially againſt his Lordſhip. The Verdict was found; and theKing's Attorney-General, in behalf of the King, did demand it: And thereupon, after a ſhort Preface, the Recorder proceeded to paſs Sentence upon the Lord *Ruſſel*, as is uſual upon a Conviction of High-Treaſon. *His Exceptions anſwered.* *He is condemned.*

Then Capt. *Walcot*, *Hone*, and *Rouſe*, were ſet to the Bar; and it was demanded of them reſpectively, What they could ſay, why Judgment ſhould not be pronounced againſt them? Walcot, &c. *called to hear Judgment.*

Rouſe anſwered, That the Words mentioned in the Indictment againſt him, were laid to have been ſpoken the ſecond of *March*; and by the Evidence they appeared to be ſpoken in *June*; and therefore he thought it ſtrange the Jury ſhould find him guilty of them: But neither he, nor either of the other two, offering any thing material in Arreſt of Judgment, the uſualSentence inHigh-Treaſon was pronounced on them all three. *Sentence pronounced againſt them.*

The Execution of Capt. *Walcot*, *John Rouſe*, and *William Hone*, being appointed on *Friday* the 20th of *July*, they were that Day drawn on Sledges from *Newgate* to *Tyburn*; and there being put into a Cart, Dr. *ThomasCartwright*, Dean of *Rippon*, and Mr. *Smith* Ordinary of *Newgate*, exhorted them to make an ingenuous Confeſſion of what they knew of the Conſpiracy. Capt. *Walcot* anſwered, He had ſome Papers in his Pocket, which he had prepared, Walcot's *Speech at the Place of Execution.*

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prepared, his Memory being bad, and desired he might read them; and the Sheriffs consenting, he looked upon one of his Papers, and began his Speech: Wherein he said, That to the End he might not be thought an Atheist, he declared he believed in the Trinity, and hoped to be saved by the Merits of Christ alone: That he also believed the Scriptures to be written by Men inspired, and ought to be the Rule of Faith: That Christ was the Head of the Church, and it was not in the Power of Councils or Cardinals, or any Power on Earth, to set up the Traditions of Men, and make them of equal Validity with the Word of God. As to the present Occasion, he said, I do neither blame the Judges, the Jury, or the King's Counsel. *I only blame some Men, that in Truth were deeper concerned, and more engaged than I, that came in as Witnesses against me; and swore me out of my Life to save their own.*

I confess I was so unfortunate as to be invited by Colonel Rumsey, *one of the Witnesses against me, to some Meetings, where some Things were discoursed of, in order to the asserting our Liberties and Properties, which we looked upon to be violated and invaded; but it was he and Mr.* West, *and some Gentlemen that are fled, that were the great Promoters of those Meetings. I was near a Quarter of a Year ill of the Gout, and during that Time, Mr.* West *often visited me; and still his Discourse would be concerning* LOPPING THE TWO SPARKS; *that was the Word he used, meaning* THE KING AND THE DUKE; *and proposed it might be done at a Play; for he said,* THEN THEY WOULD DIE IN THEIR CALLING. *He bought Arms to do it, without any Direction of mine: I never saw the Arms, nor I never saw the Men that were to do it, though they said* THEY HAD FIFTY EMPLOYED FOR THAT END. *I told several of them, that the killing the King would carry such a Blemish and Stain with it, as would descend to Posterity: That I had eight Children that I was loth should be blemished with it: And withal, I was confident the Duke of* Monmouth *would revenge his Father's Blood, if it were but to vindicate himself from having any Hand in it. Mr.* West *presently told me, that the Duke of* Monmouth *did not refuse to give an Engagement, that he would not punish those that should kill the King.*

He forgave all the World, and even Mr. *Shepherd*, who promised to carry him to *Holland*; but instead of it, delivered him up, and brought him into the Condition he was in. He forgave also the rest of the Witnesses; but begged it might be observed, if their End was Peace, and they died the common Death of all Men; *for though by the Law of the Land I ought to die, and the King may reasonably put me to Death, for being at those Meetings, where a War was debated; yet I think those Men are guilty of my Blood, that were as deep in it as I, and have betrayed me, and taken it away.* Then he accused his Friends, *That they would neither hear any Man speak, or speak themselves, what they would not have repeated; for there was no such thing as Faith in Man to Man, whatever there was in Man to God: Either the Tears of a Wife, or a Family of little helpless Children, something or other, would tempt and provoke Men to betray one another.*

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Dr. Cartwright. You blame the Witnesses for that which is their Virtue, not their Crime: That they have been Witnesses for the King.

Walcot. I was not for contriving the King's Death, if you will believe me.

Dr. Cartwright. You blame them for betraying your contriving the War, upon which the Death of the King must have followed, if your Treason had gone forward; or else you could not have defended yourself from that Justice, to which he has brought you.

Walcot. Sir, *I think it was but reasonable I should suffer: That is due from Justice, and reasonable by Law*; but these Men did not come in against me, till they did it to save themselves; and they revealed it with that aggravating Circumstance, no rational Man could be guilty of.

Dr. Cartwright. That Circumstance, which you call aggravating, is no Aggravation at all; but rather a Mitigation of your Crime. They would have it believed, that you were tenderer of the King's Person, than to shoot him when he was not armed: But you confess you were consulting that Crime.

Walcot. I was not to have a Hand in the King's Death.

Dr. Cartwright. But it was proposed when you was there.

Walcot. It was so.

Dr. Cartwright, And it was agreed to be done.

Walcot. Truly, I do not know how far it was agreed; *I was there at many Meetings.*

Dr. Cartwright. These very Meetings you could not but be sensible of.

Walcot. There were several Meetings, wherein the Business of the King's Life was never spoke of.

Dr. Cartwright. That was agreed at those Meetings; but you had a tenderer Conscience.

Walcot. I say, they were for asserting our Liberties and Properties.

Dr. Cartwright. I would fain have you explain that.

Walcot. Truly, Sir, since you do press me to speak, We were under general Apprehensions; and so were those Lords, that are likely to suffer (as I have heard), of Popery and Slavery coming in.

Dr. Cartwright. What Sign was there of it? You had no Persecution at all: You were allowed by Law to meet, five in a House, besides the Family. It is true Conventicles have been disturbed of late; and I would have you look upon it as a Judgment of God, to bring you to this, for forsaking the Communion of the Church of *England*, in which Way you were instructed from your Youth.

Walcot. I do not come here to dispute of Religion; but to die religiously, if it please God to enable me.

Dr. Cartwright. I pray God enable you: But I would not have you charge that as a Crime upon the Witnesses, which was their Duty.

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Walcot. I cannot tell how to excuſe the Witneſſes, for aggravating Things againſt me, and making them worſe than really they were: For a Man to invite another to a Meeting; to importune him to this Meeting; to be perpetually ſoliciting him, and then deliver him up to be hanged, as they have done me. ----

Dr. Cartwright. It was a Crime to ſolicit you to thoſe Meetings; but when you were in, it was a Duty in you, and in them, to reveal it: If God had given you the Grace to diſcover them, the Turn had been theirs, which is yours. And as you ſay, you cannot excuſe them, That is uncharitable.

Walcot. I do forgive them, and I deſire, with all my Heart, God would forgive them.

Dr. Cartwright. You confeſs you were guilty enough to take away your Life.

Walcot. I was ſo. The ſame Meaſure we mete to another, that Meaſure God will mete to us: I leave it to God.

Dr. Cartwright. You pray this may be the laſt Blood ſpilt upon this Account.

Walcot. I do ſo.

Dr. Cartwright. Would not you have Traitors brought to their End? You talk of ſpilling of Blood, as if it were innocent Blood now ſpilt, when you do confeſs and own the Guilt: But I ſhall give you no further Diſturbance, than my Prayers to Almighty God for you, That God would give you Mercy.

Hone's *laſt Words* at Tyburn.

Dr. Cartwright, then returning to *Hone*, and exhorting him to unburden his Conſcience: Hone *confeſſed he was guilty of this Crime, according to the Law of the Land, and the Law of God.*

Dr. Cartwright. You ſay, *you were guilty of conſpiring the Death of the King, and raiſing an Inſurrection?*

Hone. *Truly, I muſt ſay, as the Captain, I was drawn in:* Thou ſaweſt a Thief, and thou conſentedſt with him. *So I ſay, That I was drawn in: I ſaw the Thief, and conſented.* I have looked upon myſelf ſince to be the more guilty of Blood, and my Circumſtance was to be drawn in, and enſnared; for I never was at any of their Meetings, any of their Cabals, but in a publick Coffee-Houſe or Tavern, where they diſcourſed the Matter of Fact: *And I was to meet the King, and the Duke of* York; *but I did not know at that Time, when, or where, or what was my Buſineſs.*

Dr. Cartwright. But you were to aſſiſt.

Hone. Yes, I promiſed that! To aſſiſt! I was reſolved, however, to go down into the Country, and not meddle in the Thing at all; and had been in the Country; but meeting with *Keeling*, he called me, and diſcourſing with him, I did ſay, *I was for killing the King, and ſaving the Duke of* York.

Dr. Cartwright, What was your Reaſon for killing the King, and ſaving the Duke of York?

Hone. The Duke of *York* did openly profeſs himſelf to be a *Roman* Chatholick. And *I did ſay, I had rather diſpoſe of the King, than the Duke of* York.

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Dr. Cartwright. Had you rather a Papiſt ſhould reign over us, than the King? If you had had a Deſign to kill the Duke, and ſave the King, it might be to prevent Popery; but you ſay the quite contrary. God in Heaven forgive your murderous Deſign.

Hone. I know as little of this, as any poor ſilly Man in the World: I was fain to gather it; I had it not down-right; I was drawn into it; however, I am now to die. As for the Witneſſes, The Lord forgive them.

Rouſe's *Speech at the Place of Execution.*

Dr. Cartwright asking *Rouſe*, What he had to ſay? he anſwered, *I confeſs I have been a Hearer, and have underſtood too much of ſome kind of Meetings; God forgive me that I have not been as careful and diligent to diſcover them:* But then he ſaid, he had declared his Opinion againſt thoſe Things, as a Breach of the Laws of God, and the Laws of the Land. And that what he had declared to his Majeſty in Council, was the naked Truth. He endeavoured to acquit Sir *Thomas Player*, of having any Hand in the Plot; and ſaid, he was indeed acquainted with the Lord *Shafteſbury*; but was very ſhy of his Company, after he came out of the *Tower:* That Sir *Thomas* told him *(Rouſe)*, he never was in that Lord's Company but once after; *for he ſaw ſome Deſigns that he was afraid were going on:* That he *(Rouſe)* had been at ſeveral Clubs, eating and drinking; and that there was a Deſign to ſet up the Duke of *Monmouth*, (he would not ſay while the King reigned) though ſome extravagant, hot-headed Men, had taken upon them to diſcourſe thoſe Things: And *he knew ſome worthy Men, who had declared, in his hearing, that in Oppoſition to the Duke of* York, *if the King was ſeized, they ſhould ſtand by the Duke of* Monmouth. *There were others that were for a Commonwealth; and ſome few for the Duke of* Buckingham. That the way of theſe Gentlemen's diſcourſing of theſe Things, was only with one at a Time. This had long been the Practice of one of the Witneſſes againſt him, who had teſtified againſt him, the Words he ſpoke himſelf. That his *(Rouſe's)* Deſign was, to get to the Bottom of the Buſineſs, and then to have made a Diſcovery: That the ſame Witneſs told him, That a certain Number of People had made a Reſolution to attack the *Tower* of *London*, the City, *White-Hall*, and St. *James's*: That their Reſolution was not to ſpill a Drop of Blood, but only *to ſecure the King's Perſon*, that the Papiſts did not kill him; and then they would deal with the Duke of *York* as they pleaſed.

That Meſſengers being out againſt that Witneſs, he *(Rouſe)* offered him a Bed at his Houſe; and now he came and ſwore againſt him, that he was the Perſon engaged in the taking the *Tower of London*; but he never had any ſuch Thought, never conſulted any Perſon of Quality, or diſcourſed of Arms in order to it. *That it was this Witneſs, that told him, the King was to be taken off, as he came from* Windſor; *and there were ſeveral Things to be done, in order to it: That they wanted a Place of Rendezvous; ſome were for* Salisbury-

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Salisbury-Plain, *and ſome for* Black-Heath; *but* Black-Heath *was pitched upon as the moſt convenient Place: And in order to gather the People together, ſome were for giving* a *Silver Ball to be played for; which he* (Rouſe) *ſeemed to approve of, and diſcourſed* Goodenough *about it; and of drinking a Bowl of Punch, and giving out that all ſhould be welcome: And by ſuch Means, they might gather Thirty or Forty Thouſand Men together, within two or three Days*; but his (*Rouſe*'s) Deſign was only to get what he could out of them. That the ſame Witneſs told him, *Goodenough* ſaid, There were Forty thouſand Pounds in Bank; and if ſuch a Ball coſt Thirty or Forty Pounds, it mattered not, to carry on ſuch a Deſign: He ſaid alſo, there were Five Hundred Arms to be brought in, and that Mr. *Weſt* knew of them; for part of them were bought by him.----*Rouſe* added, *I do freely acknowledge, and confeſs, that it is juſt in God, in the firſt Place, and righteous and juſt in the King, that I die: I die juſtly for concealing it:* But he ſaid, he did not conceal it with a Deſign to prejudice his Majeſty.-------The Ordinary afterwards prayed, and ſung a Pſalm with them, and then they prayed by themſelves; after which the Executioner did his Office.

Lord Ruſſel *brought to the Scaffold in* Lincoln's-Inn-Fields.

The Execution of the Lord *Ruſſel*, being appointed on the 21ſt of *July*, the Sheriffs went to *Newgate*, about Nine in the Morning, to ſee if he was ready; and in a little Time after his Lordſhip came out, and went into his Coach, taking his Leave of his Lady, the Lord *Cavendiſh*, and ſeveral other Friends. There went in the Coach with him, Dr. *Tillotſon*, and Dr. *Burnet*, who attended him to the Scaffold, erected in *Lincoln's-Inn-Fields*, which was covered with black Cloth.

Being come upon the Scaffold, his Lordſhip bowed to the Company, and then turning to the Sheriff, ſaid,

His Speech.

Mr. SHERIFF.

I Expected the Noiſe would be ſuch, that I ſhould not be very well heard. I was never fond of much ſpeaking, much leſs now: Therefore, I have ſet down in this Paper, all that I think fit to leave behind me. God knows how far I was always from Deſigns againſt the King's Perſon, or of altering the Government. And I ſtill pray for the Preſervation of both, and of the Proteſtant Religion.

Mr. Sheriff I am told, that Captain *Walcot* Yeſterday ſaid ſome Things concerning my Knowledge of the Plot: I know not whether the Report is true or not. To which it being anſwered, his Lordſhip was not named by him; he replied, he hoped he was not; for, ſays he, I never ſaw him, or ſpoke to him in my whole Life; *and in the Words of a dying Man, I profeſs I know of no Plot either againſt the King's Life, or the Government:* But I have now done with this World, and am going to a better. I forgive all the World heartily, and I thank God I die in Charity with all Men; and I wiſh all ſincere Proteſtants may love one another, and not make way for Popery, by their Animoſities. I pray God forgive them, and continue the Proteſtant Religion, that it may flouriſh, as long as the Sun and Moon endure. I am now more ſatisfied to die than ever I have been.

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Then kneeling down, his Lordſhip prayed by himſelf; after which, Dr. *Tillotſon* prayed with him, and having prayed again by himſelf, he pulled off his Peruke, put on his Cap, took off his Neckcloth and Coat, and bidding the Executioner, after he had laid down a Moment, to do his Office without a ſign, he gave him ſome Gold. Then embracing Dr. *Tillotſon*, and Dr. *Burnet*, he ſubmitted to the Block, and his Head was ſevered from his Body at two Blows, according to Dr. *Burnet*, who was on the Scaffold; though others ſay, there were three Strokes, and that the firſt deprived him of all Senſe and Motion; but the Faction had got a Story among them, that they were mighty fond of propagating, namely, That the Executioner firſt ſtruck him on the Shoulder, and that his Lordſhip roſe up, and ſpoke to him, and his Head was not cut off under ſix or ſeven Strokes; inſinuating that the Executioner had Orders from Authority, to uſe him in that barbarous Manner: But theſe are ſuch Circumſtances, as would infallibly have been taken Notice of by Dr. *Burnet* if there had been any truth in them; and therefore we may very well conclude there was no Foundation for this Story.

He is beheaded.

The Paper he left behind him.

As to the Paper the Lord *Ruſſel* left behind him, it being very long, and appearing an artificial Piece, drawn up by Dr. *Burnet*'s Advice and Direction, I have deſignedly omitted it; but if the Reader has the Curioſity to peruſe that Paper, he will find it in ſeveral of our *Engliſh* Hiſtories; and in the Tract, entitled, *The Characters and Dying Speeches of the State Priſoners.*

Dr. *Tillotſon*, and Dr. *Burnet*, it is ſaid, laboured very hard to convince the Lord *Ruſſel*, *That it was not lawful to take up Arms againſt the King*; which if they could have effected, his Pardon, it was thought, might have been obtained: But he differed in Opinion with theſe Divines, at leaſt with Dr. *Tillotſon* to the laſt, as appears by a Letter Dr. *Tillotſon* wrote to him, the Day before he died, of the following Tenour.

Dr. Tillotſon's *Letter to Lord* Ruſſel *againſt Reſiſtance.*

MY LORD,

I WAS heartily glad to ſee your Lordſhip, this Morning, in that calm and devout Temper, at the receiving the Bleſſed Sacrament; but Peace of Mind, unleſs it be well grounded, will avail but little, and becauſe tranſient Diſcourſe many times hath little Effect, for want of Time to weigh and conſider it: Therefore, in tender Compaſſion to your Lordſhip's Caſe, and from all the good Will, that one Man can bear to another, I do humbly offer to your Lordſhip's deliberate Thought, theſe following Conſiderations, concerning the Points of Reſiſtance, if your Religion and Rights ſhould be invaded, as your Lordſhip puts the Caſe: Concerning which, I underſtood by Dr. *Burnet*, that your Lordſhip had once received Satisfaction, and am ſorry to find a Change. 1. *That the Chriſtian Religion doth plainly forbid the Reſiſtance of Authority.* 2. That though our Religion be eſtabliſhed

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eſtabliſhed by Law, which your Lordſhip urges as a Difference between our Caſe, and that of the primitive Chriſtians; yet in the ſame Law, which eſtabliſhes our Religion, it is declared, *That it is not lawful, upon any Pretence, to take up Arms:* Beſides which, *There is a particular Law, declaring the Power of the Militia to be ſolely in the King:* And that ties the Hands of Subjects, though the Law of Nature, and general Rules of Scripture, had left us at Liberty, which I believe they do not, becauſe the Government and Peace of human Society could not well ſubſiſt upon theſe Terms. 3. *Your Lordſhip's Opinion is contrary to the declared Doctrine of all Proteſtant Churches:* And though ſome particular Perſons have taught otherwiſe, yet they have been contradicted herein, and condemned for it, by the generality of Proteſtants. And I beg your Lordſhip to conſider, *How it will agree with an avowed aſſerting the Proteſtant Religion, to go contrary to the general Doctrine of Proteſtants:* My End in this is, to convince your Lordſhip, *That you are in a very great and dangerous Miſtake:* And being ſo convinced, That which before was a Sin of Ignorance, will appear of a much more heinous Nature, as in Truth it is, and call for a very particular and deep Repentance; which if your Lordſhip ſincerely exerciſe, upon the Sight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveneſs of God, but prevent a mighty Scandal to the Reformed Religion. I am very loth to give you Lordſhip any Diſquiet in the Diſtreſs you are in, which I commiſerate from my Heart; *but am much more concerned that you do leave the World in a Deluſion, and falſe Peace, to the Hindrance of your Eternal Happineſs.* I heartily pray for you, and beſeech your Lordſhip to believe I am with the greateſt Sincerity and Compaſſion in the World,

MY LORD,

Your Lordſhip's moſt faithful, and

afflicted Servant,

TILLOTSON.

Mr. *Echard* relates, that Dr. *Tillotſon* delivered this Letter into his Lordſhip's own Hand; who read it with great Deliberation, and acknowledged he had therein offered more to convince him, than he had ever met with before: That he was now ſatisfied, *nothing but a Caſe of a very extraordinary Nature, could juſtify Subjects in taking up Arms againſt their Prince: That he was fully of Opinion, no ſuch Cauſe had been given by the King to juſtify any ſuch Attempt againſt him. But ſtill he thought ſuch Circumſtances there might be, in which it would be lawful for them to reſiſt.*

Remarks on the five laſt Trials.

In my Remarks on the five laſt Trials, *viz.* Thoſe of Capt. *Walcot*, *Hone*, *Rouſe*, *Blague*, and Lord *Ruſſel*, I ſhall conſider theſe three Particulars. 1*ſt*, Whether there was any ſuch Plot as the Priſoners are charged with? 2*dly*, What were the reſpective Views of the Conſpirators? 3*dly* and laſtly, which of the Priſoners were guilty, and how far?

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1. Whether there was any Plot, or Conſpiracy, againſt the King and Government at that Time? And if the Evidence given at theſe Trials, againſt the Priſoners, and their own Confeſſions at the Hour of Death, will not convince their Friends of the Certainty of it, I cannot tell how it is poſſible to convince them; eſpecially if it be conſidered, that the Witneſſes of this Plot were Men of Figure and Subſtance, Men who evidently appeared with great Unwillingneſs againſt their Accomplices, and only came in to ſave their own Lives, who gave their Teſtimony with all the Tenderneſs imaginable; and, indeed, could nor forbear expreſſing their Affection for the Priſoners in open Court. Had they been a raſcally and profligate People, who made a Trade of ſwearing Men out of their Lives, for the extravagant Rewards that were offered them publickly and privately, as was the Caſe of the Witneſſes of the pretended Popiſh Plot, their Evidence might have been dubious: But when the Priſoners themſelves made no other Objections to their Teſtimony, *Than that they gave their Evidence to ſave their own Lives, and that they were as deep, or deeper, in the Plot than themſelves, and ſeduced them into it:* Surely there needs no other Proof of *a Plot in general*, the Priſoners, as well as the Witneſſes againſt them, atteſt the Truth of it: I proceed therefore to the ſecond Particular.

2. What were the ſeveral Views of the Conſpirators? And nothing is more evident than that all of them intended to make the Duke of *Monmouth* their Tool, to obtain their ſeveral Ends; the Lords *Ruſſel*, *Eſſex*, *Hampden*, *&c.* propoſed he ſhould command the Malcontents; aſſiſt them in compelling the King to exclude the Duke of *York* from the Succeſſion; to adminiſter the Government during his Majeſty's Life-time, under ſuch Limitations as they ſhould preſcribe; and that the Duke ſhould accept of the Crown after the King's Death, upon the like Limitations; that is, they propoſed to have a Chief Officer, with the Name and Title of King; but that he ſhould obey the Dictates of the Parliament, and never pretend to diſpute their high and mighty Commands. There was another Party of the Duke's particular Friends, that propoſed his enjoying the Crown with the ſame Prerogatives former Kings had done; but theſe were a very ſmall Party; for moſt of the Sons of Monarchy were for continuing the Succeſſion in the right Line: But the third and moſt powerful Faction, of which Lord *Shaftesbury* was the Head, were for extirpating both the Family of the *Stuarts*, and Monarchy itſelf, and reducing the Kingdom to a Commonwealth, like that of *Holland*, of which no doubt that Lord propoſed to be the PROTECTOR, or rather *Director*, In Imitation of the celebrated *Cromwell*; and to have exerciſed a more abſolute Dominion in the Name of the Commonwealth, than any of our Monarchs had ever aſſumed.

This third Party did not propoſe to obſerve any Meaſures, but to break through all Laws human and divine, and even to have aſſaſſi-

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nated their Sovereign, to facilitate the Enterprize; or perhaps they looked upon the People, of whom they fooliſhly imagined their Faction a Majority, to be veſted with Sovereign Authority; and that *They had a Right to depoſe, and call the Chief Magiſtrate to account, and to eſtabliſh what Form of Government they ſaw fit*; and, according to the Maxims of their Predeceſſors in Uſurpation, they propoſed *to do Juſtice* (as their Phraſe was, *either without them, or upon them*; that is, to turn out, or put to Death, the Miniſters of State at Pleaſure; and to murder their Maſter, if he oppoſed them, or refuſed to become their Slave. Thus much appears very obvious from theſe Trials, and the Declarations of the Conſpirators at the Place of Execution; which brings me to the third Particular, namely, to enquire, 3*dly*, Which of the Priſoners were guilty of any Part of the Charge, and how far?

As to Captain *Walcot*, he offers, in a Letter to Secretary *Jenkins*, to become an Evidence; and *aſſures his Majeſty, That the Conſpiracy was laid very broad*: At his Trial, *he acknowledged he had been at ſeveral treaſonable Conſults, and was acquainted with the intended Inſurrection*: At his Execution, he ſays, Mr. *Weſt* often viſited him, and his Diſcourſe was ſtill concerning the *lopping the two Sparks*; by which was meant, *the murdering the King and Duke*; and that it was ſometimes propoſed to be done at the Play-houſe: That *Weſt* told him, Arms were provided, and Fifty Men employed to aſſaſſinate the King and Duke; and that he *(Walcot)* told them, the killing the King and Duke would caſt a Blemiſh on them and their Poſterity, and the Duke of *Monmouth* would revenge his Father's Death.

He confeſſed, *That by the Law of the Land he ought to die*, for being at thoſe Meetings, where a War was debated; and in another Place, *he acknowledges the King's Murder was propoſed, when he was preſent*: After which, it is impoſſible to doubt whether he was to have a Share in the Inſurrection, and was acquainted with the Deſign of ſome of his Party to aſſaſſinate his Majeſty; and as he concealed both theſe traitorous Deſigns, though he pretends he diſapproved the Murder, he was ſurely, in a great Meaſure, guilty of both. If he was contriving an Inſurrection when he knew others deſigned to take that Opportunity to murder the King, in order to facilitate the Inſurrection he was engaged in. Can any one ſuppoſe he was very averſe to the Aſſaſſination? Or that he would not have been pleaſed to have ſeen it effected, though he was not fond of the Infamy of the Action?

I ſhall conclude my Remarks on Capt. *Walcot*'s Caſe, with the Character Biſhop *Sprat* gives him; namely, "That he was an Officer "in *Cromwell*'s Army, who, after Pardon and "Indemnity received, and a plentiful Eſtate "ſecured to him at the King's Reſtoration, "was nevertheleſs engaged in all the Plots "againſt the Government ever ſince; and "particularly in that of *Ireland*, ſome Years "before, to ſurprize the Caſtle of *Dublin*. "He was introduced by Lord *Howard*, un-"der the Character of a ſtout and able Offi-"cer, into a ſtrict Familiarity with the Earl "of *Shaftesbury*, from whom he never de-"parted till his Death; accompanying him "in his Flight to *Holland*, and returning "thence with his Corps; he and *Ferguſon* "having this peculiar Mark of his Kindneſs, "to be made Legatees in his laſt Will, as his "ſpecial Friends." *Biſhop of* Rocheſter's *Narrative of the Conſpiracy*, Page 22.

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As to *Hone*, he confeſſed at his Trial, That he was to be one of thoſe who was to go down to the *Rye*, to aſſaſſinate the King; and was to have twenty Pounds for that Service; but ſays, he was drawn into it by *Goodenough*: After which, it is ſurely unneceſſary to bring further Proof of his Guilt; or that ſome of the Conſpirators had formed a Deſign to aſſaſſinate his Majeſty at *Rumbold*'s Houſe at the *Rye* in *Hertfordſhire*, as he came from *Newmarket*.

As to *Rouſe*, it was proved at his Trial, He had been at ſeveral treaſonable Conſults; That he knew ſome of the Conſpirators had a Deſign to aſſaſſinate the King: That he had declared, *Whatever the King had, the Parliament gave him: That the King had forfeited his Crown, and had no Right to it.* At his Execution he ſaid, He knew ſome worthy Men, who in his hearing declared, That in Oppoſition to the Duke of *York*, if the King was ſeized, they would ſtand by the Duke of *Monmouth*: Others were for a Commonwealth: and ſome few for the Duke of *Bucks*. That it was the principal Witneſs againſt him, who told him, *The King was to be taken off as he came from* Windſor; *and ſeveral Things were to be done in Order to it.* They were divided about a Place to aſſemble their Forces: Some were for *Salisbury-Plain*, and ſome for *Black-heath*; but *Black-heath* was at length agreed on: And in order to gather their Friends together, it was propoſed to play for a Silver Ball; which he ſeemed to approve of, and ſaid, they might gather together thirty or forty thouſand Men by that Means. And though he ſays, in his Excuſe, that he went to their Meetings only to ſerve the King, and enable himſelf to diſcover the Bottom of the Plot; yet he ſeems to recollect himſelf afterwards, and ſays, *I do freely acknowledge and confeſs, that it is juſt in God in the firſt Place, and righteous and juſt in the King, that I die: I die juſtly for concealing it* (the Conſpiracy); which he could not be ſaid to have done, if it had appeared he had no other Deſign than to have ſerved the King by a Diſcovery: And therefore we can no longer doubt he was to have had a Share in the intended Inſurrection; and was guilty, at leaſt, of concealing, that there was a Party that intended to aſſaſſinate his Majeſty.

I come now to enquire into the Lord *Ruſſel*'s Caſe, who was charged with Meeting and Conſulting with other Conſpirators, to raiſe an Inſurrection and Rebellion; and with a Deſign to ſurprize the King's Guards at *Whitehall*.

The Witneſſes againſt him were Colonel *Rumſey*, Mr. *Shepherd*, and my Lord *Howard*, his intimate Friends. Colonel *Rumſey* depoſed, That he was ſent by Lord *Shaftesbury* to the

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Duke of *Monmouth*, Lord *Ruſſel*, Lord *Grey*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, who were met that Evening (*November* 2.) at Mr. *Shepherd*'s Houſe, to know what Reſolution they came to about the Riſing at *Taunton*; and that he went to Mr. *Shepherd*'s, and found all that Company there; and having delivered his Meſſage, they anſwered, Mr. *Trenchard* had failed them, who had promiſed to raiſe a thouſand Foot, and three hundred Horſe; but could not perform it; and Lord *Shaftesbury* muſt be content (to defer the Riſing.)

He teſtified alſo, That there was a Diſcourſe of ſeeing what Poſture the Guards were in, it being intended to ſurprize them: And being asked, if it was diſcourſed by all the Company, he anſwered, *All the Company did debate it*; *and that the Lord* Ruſſel *was agreeing to it: He teſtified alſo, That the Lord* Ruſſel *did diſcourſe of the Riſing at* Taunton.

Mr. *Shepherd* alſo teſtified, That the Duke of *Monmouth*, Lord *Ruſſel*, and the reſt of the Company, met at his Houſe; and that the Subſtance of their Diſcourſe was, *How to ſurpriſe the Guards: And that ſomewhat was read, in the Nature of a Declaration, ſetting forth the Grievances of the Nation, in order to a Riſing.*

Lord *Howard* depoſed, That on Lord *Shaftesbury*'s going to *Holland*, the Duke of *Monmouth*, Lord *Eſſex*, Lord *Ruſſel*, Mr. *Hampden*, jun. *Algernon Sidney*, and himſelf, formed a Cabal or Council, in order to propoſe Matters for the intended Inſurrection (for the Buſineſs was not dropped on the Lord *Shaftesbury*'s retiring beyond Sea, but deferred): *That they met accordingly, and conſulted about raiſing Men: Where it was proper to begin the Inſurrection*; *whether at* London *or in the Country*; *and how to provide Arms and Money: But the principal Buſineſs was, to engage the Kingdom of* Scotland *in the Conſpiracy, before they declared themſelves.*

The Lord *Ruſſel* acknowledged at his Trial, that he met the Company mentioned, at Mr. *Shepherd*'s: And that he twice met the Gentlemen ſaid to be of the Council of Six.

And in the Paper his Lordſhip left with the Sheriff, he confeſſes, *He was with the Company at Mr.* Shepherd's, *and that there was ſome Diſcourſe of the Feazibleneſs of ſurprizing the Guards there*; and ſeveral Times by Accident, in general Diſcourſe he had heard it mentioned elſewhere, as a thing might eaſily be done; but never conſented to, as fit to be done: And, *particularly at Lord* Shaftesbury's *there being ſome general Diſcourſe of this Kind, he flew out, and exclaimed againſt it.*

In another Part of that Paper his Lordſhip ſays, The Duke of *Monmouth* came to him, and ſaid, he was extremely glad he was come to Town; *for Lord* Shaftesbury, *and ſome hot Men, would undo them all*, if great Care was not taken; and therefore deſired, for God's Sake, he would uſe his Endeavours with his Friends, to prevent any Thing of that Kind. *That he told him, there would be Company at Mr.* Shepherd's *that Night, and took him thither with him: And there were ſome Things ſaid there, with much more Heat than Judgment, which he ſufficiently diſapproved; and yet for theſe Things he was condemned: And that it had been urged againſt him, That he was acquainted with theſe Heats and ill Deſigns, and did not diſcover them: But this was but Miſpriſion of Treaſon at moſt.* That he was adviſed not to confeſs Matter of Fact plainly at his Trial, *ſince that muſt certainly have brought him within the Guilt of Miſpriſion of Treaſon.*

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Upon the Whole, there naturally ariſes three Queſtions:

1. Whether the Lord *Ruſſel* committed the Facts he was charged with?

2. Whether there was legal Evidence given to convict him? And,

3. Whether thoſe Facts were High-Treaſon, or juſtifiable by the Laws and Conſtitution of this Kingdom?

1. And firſt: His Lordſhip acknowledged he was at ſeveral Conſults or Meetings, which the Lawyers call Treaſonable; (that is) where the ſurprizing the King's Guards, and an Inſurrection, was treated of; and that he went deſignedly with the Duke of *Monmouth*, to Mr. *Shepherd*'s, to prevent the Earl of *Shaftesbury*, precipitating Matters; which is a ſtrong Evidence they had conſulted and debated of an Inſurrection before. He confeſſed alſo in his Paper, that the ſeizing the Guards had ſeveral Times been debated in his Company: *That he once flew out into a Paſſion when it was propoſed*; and that the Duke of *Monmouth* ſaid to him, *Did you ever hear ſo horrid a Thing?* Which would incline an impartial Man to believe, that theſe Things were talked of in earneſt, and with a View of putting them in Execution; eſpecially if it be conſidered, That *the Duke of* Monmouth, *one of the Six, with whom this Lord aſſociated himſelf, confeſſed himſelf guilty under his Hand:* And the Lord *Eſſex*, another of the Cabal, ſent a Meſſage to his Lady, when he was in the *Tower*, *That what he was charged with was true:* That Mr. *Hampden*, another of the Cabal, *confeſſed himſelf guilty in open Court afterwards:* And Lord *Howard* did not only confeſs his Guilt, but became an Evidence againſt his Accomplices.

Is it poſſible, after this, to believe no Inſurrection was intended, or conſidered of, at theſe Meetings? And if there was, though ſome of the Company might diſagree about the Time or the Manner, I doubt the Law would look upon them *all* as guilty of *High-Treaſon*, rather than *Miſpriſion* of Treaſon, which is only, *where a Perſon accidentally falls into Company, and hears Treaſon without revealing it*; and not where all the Company meet *on Purpoſe* to debate treaſonable Matters, which they have had under their Conſideration before.

2. As to the Legality of the Evidence, both Colonel *Rumſey* and Mr. *Shepherd* agree, That the Meeting at *Shepherd*'s Houſe was by Deſign and Appointment, and not accidental: Both of them agree, that the ſurprizing

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prizing the Guards was debated; and the Colonel avers, that their Meeting was to conſult, as well concerning the intended Inſurrection, as the ſurprizing the Guards: Nay, that Lord *Shaftesbury* ſent him to this very Company, telling him they were to meet at Mr. *Shepherd*'s by Appointment, to know what was done in Relation to the Riſing at *Taunton*: And Lord *Howard* gives Evidence of the Lord *Ruſſel*'s being at ſeveral Meetings, where the Inſurrection was conſidered, and the raiſing Arms and Money to effect it: The *Scots* invited into the Conſpiracy; and a Sum of Money promiſed them, to enable them to make a Diverſion.

Thus we find Colonel *Rumſey* and Lord *Howard* poſitive as to the Debates concerning an Inſurrection; and both Colonel *Rumſey* and *Shepherd* as poſitive, that the Propoſal of ſurpriſing the Guards, was made when the Lord *Ruſſel* was preſent: So that here are, in Reality, three Witneſſes inſtead of two, which the Law requires, to convict a Perſon of High-Treaſon: And that ſuch Conſults are treaſonable, and may be given in Evidence as Overt-Acts of Compaſſing and Conſpiring the King's Death, was conſtantly reſolved at the Trials of the Conſpirators againſt King *William*, and ever ſince the Revolution.

3. But then come my Lord *Ruſſel*'s Friends, and ſay; Admitting all theſe Facts to be true, notwithſtanding the Opinions of the Lawyers, there was no Treaſon in the Matter; for theſe Conſultations were intended for the Support and Preſervation of the Conſtitution in Church and State. Our Liberties were invaded by the Adminiſtration: The Proteſtant Religion in danger of being ſubverted; and Popery, and Arbitrary Power, eſtabliſhed: We had no other View but the ſecuring our Religious and Civil Rights, and reducing the Prerogative within its due Bounds: His Lordſhip's Caſe was the ſame with thoſe worthy Patriots, who were inſtrumental in the glorious Revolution.

To which it is anſwered, That the Circumſtances of the reſpective Caſes, were widely different: There were no Breaches made in our Conſtitution then, like thoſe in the ſucceeding Reign; none, at leaſt, that could juſtify an Inſurrection. The greateſt Grievance the Faction complained of, was, the putting the Laws in Execution againſt the Sectaries: And how hard and uncharitable ſoever this might be, it is generally held, *That while the King and his Miniſters only put the Laws and Statutes of the Realm in Execution, they are not to be reſiſted on any Pretence whatſoever.* And as for the Apprehenſions of Popery and Arbitrary Power in the next Reign; neither could this juſtify an Inſurrection, while our Religious and Civil Rights were actually protected. At the Revolution, both the Civil and Military Government were put into the Hands of profeſſed Papiſts and Presbyterians, Enemies to the Conſtitution, and diſqualified to hold any Poſts in the Government: A great Standing Army was kept up in Time of Peace; the Penal Laws and Teſt ſuſpended, or evaded: the Biſhops, Clergy, and Univerſities, were attacked in the moſt violent Manner, for inſiſting on their Rights; and the whole Frame of Government, in a Manner, diſſolved; which was ſo notorious to the whole Nation, that they reſolved, as one Man, to ſtand up in Defence of the Conſtitution, and of their Liberties and Properties: For it is true, this is a legal and a limited Monarchy; and the People have as much Right to be governed according to Law, as the King has to govern them by Law. But then it is not every little Deviation from the Laws, every falſe Step in the Adminiſtration; or private Wrong done to ſome particular Man, or Party of Men, that will juſtify their taking up Arms: The Grievances ought to be general; and our Religious or Civil Rights actually invaded in ſuch apparent Inſtances, that a Majority of the Nation may be convinced the Foundations are ſtruck at: For might every little Faction enter into Plots and Conſpiracies againſt the Government, when the Adminiſtration is not agreeable to their Taſte, what Confuſion muſt it perpetually create in the Kingdom. One Set of Men might approve that Conduct, which another diſapproved; and we ſhould probably have as many contending Armies on Foot in the Iſland, as we have Opinions; a State more to be dreaded than that of Abſolute Monarchy. Whoever is at the Helm therefore, for the Preſervation of themſelves and the Conſtitution, will ever find it neceſſary to ſuppreſs ſuch Kind of Conſults and Conſpiracies, and puniſh them as treaſonable.

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It is very probable the Lord *Ruſſel*, and many more of his Party, had no other View, than to compel the King to call a Parliament, and paſs ſuch Acts as might ſecure the Nation againſt Popery and Arbitrary Power in the ſucceeding Reign: And were of Opinion that, according to the Conſtitution they might lawfully put a Force upon their Prince, and compel him to put the Adminiſtration into ſuch Hands as they directed him; --- the King being no more than their Officer; and the Supreme Power really veſted in the Commons. And thus his Lordſhip might unfortunately and ignorantly incur the Guilt of High-Treaſon, while he imagined he was ſerving his Country, and ſupporting the Conſtitution; which ſeems to me the moſt charitable Conſtruction that can be put upon his Actions. His ſolemn Profeſſions that he had no Deſign againſt the King or Government, at the Hour of Death, can no other way be accounted for.

I am apt to think, that the Parliament that reverſed his Attainder at the Revolution, were of Opinion, his Lordſhip deſigned well (however he might have been miſtaken in our Conſtitution); and as he was a Gentleman of great Honour and Virtue, and of a Family well-affected to King *William* and the Revolution, the Bill met with the eaſier Paſſage.

The

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The Trial of ALGERNON SIDNEY, Eſq; for *High-Treaſon*, at the *King*'s-*Bench-Bar*, the 21ſt of *November*, 1683. 35 *Car.* II.

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Sidney's *Trial.*

The Indictment.

THE Priſoner, was brought by *Habeas Corpus*, from the *Tower*, and arraigned the 7th of *November*, and the Indictment read; which charged him with Compaſſing and Conſpiring the Death of the King, and the Subverſion of the Government; and for that End, aſſembling and conſulting with other Traitors, on the 30th of *June*, in the 35th Year of his preſent Majeſty, at the Pariſh of St. *Giles*'s *in the Fields*, in the County of *Middleſex*, how to execute and fulfil the ſame: And that he ſent *Aaron Smith* into *Scotland* to invite the Malcontents in that Kingdom, to join with the ſaid *Engliſh* Traitors to perpetrate the ſaid Treaſons. And it further charges, That the Priſoner, in order to accompliſh his ſaid traitorous Compaſſings, Imaginations and Purpoſes; and to perſuade his Majeſty's *Engliſh* Subjects, that it was lawful to riſe in Rebellion againſt him; did, at the Time and Place aforeſaid, traitorouſly compoſe and write a falſe, ſeditious, and traitorous Libel, wherein, among other Things, were contained the following Words, *(viz.) The Power, originally in the People of* England, *is delegated unto the Parliament: He* (meaning his preſent Majeſty) *is ſubject unto the Law of God, as he is a Man; to the People that make him a King, inaſmuch as he is a King: The Law ſets a Meaſure unto that Subjection; and the Parliament judges of the particular Caſes thereupon ariſing: He muſt be content to ſubmit his Intereſt unto theirs; ſince he is no more than any one of them, in any other reſpect, than that he is, by the Conſent of all, raiſed above any other. If he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition (as all Magiſtrates do the Power they receive), and ſwear to perform it, he muſt expect that the Performance will be exacted; or Revenge taken by thoſe he hath betrayed.* And in another Place ſays, *We may therefore change, or take away Kings, without breaking any Yoke (or that is made a Yoke) which ought not to be one: The Injury therefore is in making, or impoſing; and there can be none in breaking it*, Againſt his Allegiance, &c.

A Bill of Exceptions offered, and refuſed.

The Priſoner deſiring to put in a Bill of Exceptions to the Legality of the Indictment, was told, he muſt either plead or demur; and that it would not be accepted, unleſs he offered it as a Plea: Whereupon, after ſome Debate between the Court and the Priſoner, he pleaded *Not guilty*. Then he deſired a Fortnight's time to prepare for his Trial, which was granted. He deſired alſo Counſel, and a Copy of his Indictment, which were denied; and he was only indulged ſo far as to hear it read again in *Latin*.

Counſel, and a Copy of the Indictment, denied.

Challenge for want of Freehold.

The Trial coming on the 21ſt of *November*, the Jury, after ſeveral Challenges, were ſworn: He challenged ſome for want of Freehold; but this was not held a legal Cauſe of Challenge.

The Evidence of a Plot in general.

The Witneſſes being called, Colonel *Rumſey* and Mr. *Weſt* gave a general Account of the Plot; but ſaid nothing againſt the Priſoner in particular, but what they had by Hearſay; of which the Priſoner complaining, and urging that this was done with a Deſign to prepoſſeſs the Jury, he was anſwered, That this was the Practice at the Lord *Stafford*'s Trial; and at all the Trials for the Popiſh Plot, when his Friends had the Direction of the Proſecution.

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Then the Lord *Howard* was ſworn, and depoſed, That the principal Conſpirators agreed, the preceding Month of *January*, to form themſelves into a Cabal, or Council of Six, in order to prepare Matters for an Inſurrection; and that the Members of this Cabal were, the Duke of *Monmouth*, the Lords *Eſſex* and *Ruſſel*, Mr. *Hampden*, the Witneſs, and Colonel *Sidney*, the Priſoner: That theſe Gentlemen had a Meeting at Mr. *Hampden*'s Houſe, the latter End of *January*, and conſidered when, and where, it was proper to begin the Inſurrection; and what Magazines and Money would be wanting to carry on the Enterprize. That about a Fortnight or three Weeks after, the ſame Cabal had a Meeting at *Southampton* Houſe (the Lord *Ruſſel*'s); and it being debated what Anſwer they ſhould give to thoſe who demanded a Reaſon for the intended Inſurrection, and whoſe Aſſiſtance they expected, It was agreed, to reſolve all into the Power of the Parliament; and declare, they intended nothing but the publick Good. That they alſo conſidered the ſettling a good Underſtanding with the Lord *Argyle*, and ſome leading Men of the Kingdom of *Scotland*; and the inviting them to join with the *Engliſh* Conſpirators. And it was agreed to diſpatch *Aaron Smith* to *Scotland*, to negotiate that Affair; and to ſend a Letter by him to Sir *John Cockram*, under the Diſguiſe of providing for a Plantation in *Carolina*. That he ſaw the Priſoner (Colonel *Sidney*), afterwards, put ſixty Guineas in his Pocket, which he told this Witneſs (Lord *Howard*) were for *Aaron Smith*. After this, he told him *Aaron Smith* was gone, and he had heard from him from *Newcaſtle*.

Lord Howard's Evidence.

The Court demanding of the Priſoner, If he would ask this Witneſs any Queſtions? He anſwered, He had no Queſtions to ask him.

Sir *Andrew Foſter* being ſworn, depoſed, That Sir *John Cockram*, and the two *Campbels*, came up from *Scotland* to *London* laſt Summer; and that Sir *John*, when he was taken, pretended they came up about making a Purchaſe in *Carolina*.

Evidence that the Scotiſh Agents came up.

Sir *Philip Lloyd* depoſed, That the treaſonable Libel, laid in the Indictment, was found upon a Desk in the Priſoner's Study.

Evidence of the treaſonable Libel found in his Study;

Mr. *Shepherd* and Mr. *Carey* depoſed, That they had ſeen the Priſoner's Hand to ſeveral Bills of Exchange, and believed the Libel to be written by the ſame (the Priſoner's) Hand.

of his Hand.

Cooke depoſed, That he had never ſeen Colonel *Sidney* write; but he had ſeen ſeveral Notes that came to him, with Endorſements of his Name, and they had paid them; and the

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The Libel read.

Writing was like this; nor were they ever called to an Account for Miſ-payment.

Then Mr. Attorney deſired the Libel might be read.

Colonel *Sidney* deſired it might be *all* read.

The Chief Juſtice told the Priſoner, Mr. Attorney muſt have what Part he deſired read; and then he (the Priſoner) ſhould have what Part he deſired read afterwards.

Then the Clerk read ſome other Paſſages in the Libel, beſides thoſe laid in the Indictment, *(viz.) I know not why the Multitude ſhould be concluded headleſs:* Moſes *was Head of the Multitude that went out of* Egypt. Othoniel *led them againſt the King of* Meſopotamia, *&c. The Earl of* Murray *headed the People of* Scotland *in the Minority of King* James I. *And in all the Revolutions we have had in* England, *the People have been headed by the Parliament; or the Nobility and Gentry that compoſed it: And when Kings failed of their Duties (in calling a Parliament) they called it by their own Authority. The Multitude therefore is never headleſs; but either finds or creates Heads to itſelf: And why may they not ſhake off the Yoke, if it prove uneaſy or hurtful to them? When* Tarquin *turned the Regal Monarchy of* Rome *into a moſt abominable Tyranny, Why ſhould they not aboliſh it? And when the Proteſtants of the* Low Countries *were ſo grievouſly oppreſſed by the Power of* Spain, *Why ſhould they not make uſe of all the Means that God had put into their Hands for their Deliverance? If the King of* Spain *deſired to keep his Subjects, he ſhould have governed them with more Juſtice and Mercy; when, contrary to all Laws, Human and Divine, he ſought to deſtroy thoſe he ought to have preſerved; he can blame none but himſelf, if they delivered themſelves from his Tyranny. As to the People being Judges in their own Caſe, it is plain, they ought to be the only Judges, becauſe it is their own, and only concerns themſelves: The general Revolt of a Nation from its own Magiſtrates can never be called Rebellion: The Power of calling and diſſolving Parliaments is not in the King.*

Mr. Attorney demanding, If the Priſoner would have any other Part of it read; he anſwered, He did not know what to ſay to it, as it was read thus in Pieces: The Chief Juſtice anſwered, He perceived, the Colonel had diſpoſed it under certain Heads; and demanded, to what Heads they ſhould read? To which the Priſoner only replied, Let him give an Account of it that did it; and demanded, what Statute he was indicted upon? The Court anſwered, He was indicted on the 25 *Edw.* III. which made it High Treaſon, to compaſs or conſpire the King's Death; and the Overt-Act was ſufficiently ſet forth in the Indictment.

The Priſoner's Defence.

Then the Colonel proceeded in his Defence, and ſaid, Since I am indicted on that Statute, I am not to take notice of any other. I am indicted for conſpiring the Death of the King, becauſe ſuch a Paper is found in my Houſe: I think that can be nothing at all to me; for, though Sir *Philip Lloyd* did ask me if I would put my Seal to it, he did not ask me till he had been in my Cloſet; and I knew not what he had put in: Then come theſe Gentlemen upon Similitude of Hands. My Lord, one told me, within theſe two Days, that a Perſon came to him and offered to counterfeit any Hand he ſhould ſhew him, in half an Hour: And there is a like Caſe of my Lady *Carr*, ſome few Years ago: She was indicted of Perjury, and, as Evidence againſt her, ſome Letters of hers were produced, that were contrary to what ſhe ſwore in Chancery; and her Hand was proved; that it is to ſay, it was like it: But the Chief Juſtice *Kelynge* directed the Jury, that though in Civil Cauſes it was a Proof, yet it was the ſmalleſt and leaſt of Proofs; but in Criminal Caſes it was none at all. Mr. Attorney ſhewed ſome Papers to me; I do not know whether they are mine or no; but theſe very Papers, ſuch as they are, do abhor, as much as any one can, ſuch a Deſign: Look upon them, you ſee they are all old Ink; they may have been written perhaps theſe twenty Years, the Ink is ſo old; and, my Lord, it is a polemical Diſcourſe; it ſeems to be an Anſwer to *Filmer*, which is not calculated for any particular Government in the World: And they, by a ſtrange kind of Conſtruction and Imagination, will have it, that theſe Papers, ſaid to be found in my Study, had relation to this Plot, as they call it; I know of none, nor am in none: But if a Commoner of *England* write his preſent Thoughts, and another Man looking on the Book, write his preſent Thoughts, what great Hurt is there in it? However, I ſay, firſt, it is not proved upon me; and ſecondly, it is not a Crime, if it be proved: Beſides, my Lord, if theſe Papers are right, it mentions two hundred and odd Sheets; and theſe ſhew neither Beginning nor Ending: And will you indict a Man for Treaſon, for Scraps of Paper found in his Houſe, relating to an antient Paper, intended as innocently as any thing in the World; and piece and patch this to my Lord *Howard*'s Diſcourſe, to make this a Contrivance to kill the King? Then, my Lord, I think it is a Right of Mankind, and it is exerciſed by all ſtudious Men, to write in their own Cloſets, what they pleaſe for their Memory; and no Man can be anſwerable for it, unleſs he publiſh it.

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The Chief Juſtice anſwered, *Pray do not go away with that Right of Mankind; That it is lawful for me to write what I will in my own Cloſet, ſo I do not publiſh it:* We muſt not endure Men to talk thus; that by the Right of Nature, every Man may contrive Miſchief in his own Chamber, and is not to be puniſhed for it, till he thinks fit.

The Colonel replied, If they will produce the whole, then I can ſee, whether one Part contradicts another: You ask me, What other Paſſage I would have read? I do not know a Paſſage in them; I cannot tell whether it be good or bad; and what if any body had in my Houſe found Papers that were not well juſtifiable, either in my own Hand or another's; Is this Treaſon? Does this imagine the Death of the King? If any Man can ſay, I ever printed a Sheet in my Life, I will ſubmit to any Puniſhment: Nor have theſe Papers any Relation to the Deſign againſt the King's Life: You find only Scraps of Papers, never perfect, written many Years ago; and which could not be calculated for raiſing the People now. What

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Man can be ſafe, if the King's Counſel may make ſuch (whimſical, I would not ſay, but) groundleſs Conſtructions? If I had publiſhed it, or the Thing had been whole, and mine, I muſt have anſwered it; but for theſe Scraps, never ſhewed any body, that I think does not at all concern me: And, I ſay, If the Jury ſhould find it, which is impoſſible, I deſire to have the Law reſerved to me.

Then as for the Evidence, I cannot be indicted, much leſs tried, and condemned, on the 25th of *Edw.* III. The Act requiring two Witneſſes, to that very Branch unto which the Treaſon does relate. Now the Conſpiring the Death of the King, and the levying War, are two Treaſons; and there muſt be two Witneſſes to either of theſe: Only my Lord *Howard* ſpeaks of the ſix Men, who were a ſelect Council, and he is but one Witneſs; and if by the Law there muſt be two Witneſſes to the ſame Fact, there is an End of the Matter: For one to come and tell a Tale of a Tub, of an imaginary Council, and another of a Libel or Paper, written No-boby knows when, is ſuch a Thing as you can never get over.

The Chief Juſtice ſaid, If he relied on that, he would direct the Jury preſently.

The Priſoner went on, and ſaid, My Lord *Howard* ſets forth his Evidence very rhetorically; but it does not become a Witneſs; for he is only to tell what is done: And ſaid, His Lordſhip atteſted, That *they* took upon them to conſider; but does not ſay, what one Man ſaid, or what one Man reſolved, much leſs what I did; and I deſire I may have Counſel to that Point, of there being but one Witneſs.

The Chief Juſtice anſwered, That was a Point of Fact. Colonel *Sidney* replied, If the War was not levied, it was not within the Statute.

Whereupon the Chief Juſtice ſaid, The Court will have Patience to hear you; but this is miſpending your Time. If you can anſwer the Fact; or, if you can diſparage the Witneſſes, do; but do not ask us Queſtions, this Way or the other.

Then the Colonel proceeded, and ſaid, As to my Lord *Howard*, he has accuſed himſelf of divers Treaſons; and I do not hear he hath his Pardon for any. He is under the Terror of theſe Treaſons, and the Puniſhment for them: He hath ſhewn himſelf to be under that Terror: He hath ſaid, That he could not get his Pardon, till he had done ſome other Jobs, *till he was paſſed this Drudgery of ſwearing*; that is, he would procure his own Indemnity, by deſtroying of others: Beſides, my Lord, he is my Debtor, I lent him a conſiderable Sum of Money, in Time of his great Neceſſity; and when the Mortgage was forfeited, to avoid paying it, he gets me laid up in the *Tower*: And he would have perſuaded my Servants to put my Plate and Goods into his Hands, when I was made Priſoner. My Lord, he hath made ſeveral Affirmations, with Hands and Eyes lift up to Heaven, that he believed I was innocent: And though my Lord *Howard*'s Teſtimony were to be credited; it is but ſingle, as to the Conſult, and the ſending of *Aaron Smith*: Beſides, conſpiring to levy War is not Treaſon, and I deſire Counſel to that.

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The Chief Juſtice anſwered, He might as well ask him, Whether the firſt Chapter of *Littleton* was Law.

The Evidence for the Priſoner.

Then the Priſoner called his Witneſſes; and the Lord *Clare*, the Lord *Angleſey*, Mr. *Howard*, Dr. *Burnet*, and ſeveral more, depoſed, That they had heard the Lord *Howard* ſay, in the moſt ſolemn Manner, that the Priſoner was innocent; and that he knew nothing of a Plot: To which the Attorney General anſwered, Would not any Man have ſaid as much, that had been in a Plot?

After which, the Colonel proceeded in his Defence; and ſaid, It is firſt imagined, that I intended to raiſe a War; and then it is imagined, that War would tend to the Deſtruction of the King: Now that may follow, but that is not natural or neceſſary; it cannot be ſo underſtood by Law. Many Wars have been, and the Death of the King has not followed: It is two diſtinct Treaſons, to make War, and to endeavour to kill the King: Now, as there is no Manner of Proof, that I intended to kill the King directly, ſo it cannot be by Inference, becauſe, it is Treaſon of another Species; and therefore, though I had made War, I could not be ſaid to have conſpired the Death of the King. Beſides, I ſay, It is not the beſt Man's Evidence here, would be good in this Caſe, becauſe the Law requires two. The next Thing is the Buſineſs of *Aaron Smith*: My Lord, *Howard* tells you of a Letter ſent with him; but he does not ſay by whom written, what was in it, or whether it was delivered or not: Nor have I written, or ſent a Letter into *Scotland* ſince the Year 59. I returned into *England* in the Year 77; and ſince that Time, have not written, or received, a Letter from *Scotland*: And as to the *Scots* Gentlemen that are come hither, I never ſaw the *Campbels*, or *Monroe*, in my Life. As to the Papers, What Agreement is there between them, and that other Buſineſs of the ſelect Council, as my Lord *Howard* calls it? And what was this ſelect Council, ſuppoſe Lord *Howard* was to be credited? But a few Men talking at large, of what might be, or might not be, without any Manner of Intention of doing any thing. They did not ſo much as enquire, whether there were Men, Arms, or Ammunition in the Country; and how unlikely it is, that a War ſhould be made by five or ſix Men, not knowing one another, or not truſting one another; for what Dr. *Coxe* ſaid at my Lord *Ruſſel*'s Trial, of my Lord *Howard*'s not being truſted by any Party, he might have ſaid of ſome others: And I deſire your Lordſhip to conſider, Whether there be a Poſſibility for any Men, that have the Senſe of Porters, to do ſuch Things as my Lord *Howard* would put upon us? He, the great Contriver of this Plot, goes to theſe Conſults, and agrees on nothing; then he goes into *Eſſex*, upon important Buſineſs, greater than the War of *England* and *Scotland*: To what Purpoſe? To look after a little pimping Manor: And what then? Why then, it muſt be laid aſide, and he muſt be idle five Weeks at the *Bath*; and there is no Enquiry after the Deſign: Is there any Appearance of Probability in all this? But further, my Lord, you are to go according to plain Proof: Conſtructive Treaſons, belong only to the Parliament.

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ment. If I have neither endeavoured to kill the King, or levied War; then it is Matter of Conſtruction, and does not belong to any private Court.

Mr. Solicitor's Reply to the Colonel.

To this Defence, Mr. Solicitor *Finch* replied, The Crime the Priſoner ſtands accuſed of, is, compaſſing and imagining the Death of the King: That which we go about to prove that compaſſing and imagining by, is, by his meeting and conſulting how to raiſe Arms, againſt the King; and by plain Matter in writing, under his own Hand, where he does affirm, It is lawful to take away and deſtroy the King. Notwithſtanding what the Priſoner has objected, it hath been adjudged over and over again, that an Act, which is one Branch of that Statute, may be an Overt-Act to prove a Man guilty of another Branch of it: Levying War is an Overt-Act to prove a Man guilty of conſpiring the Death of the King, as was adjudged in the Caſe of Sir *Henry Vane*; and ſo is meeting and conſulting to raiſe Arms; and Reaſon does plainly ſpeak it to be ſo: For they that conſpire to raiſe War againſt the King, cannot be preſumed to ſtop any where, till they have dethroned or murdered the King: And though the Priſoner ſays, there muſt be two Witneſſes to every particular Fact; this hath been often objected, and as often over-ruled: It was over-ruled ſolemnly, in the Caſe of the Lord *Stafford*.

As to the Papers found in Colonel *Sidney*'s Houſe, we prove them to be Colonel *Sidney*'s Hand, by as much Proof as the Thing is capable of; and ſuch Proof as in all Caſes hath been allowed: And that is by Men, who knew, and are acquainted with his Hand-writing, who come and ſwear they believe this to be his Hand. And Sir *Philip Lloyd* atteſts that theſe very Papers were found in the Priſoner's Study, on a Table where he uſed to write: And for the Surmiſe, that they were laid there, it is altogether without Ground. And if they were wrote by him, the next Thing will be, how far this will be Evidence to prove his compaſſing and imagining the Death of the King. Compaſſing and imagining the Death of the King is the Act of the Mind, and is Treaſon, while it remains ſecret in the Heart; though no ſuch Treaſon can be puniſhed, becauſe there is no Way to prove it: But when once there is an Overt-Act, that is, *any thing that does manifeſt and declare ſuch Intention*; then the Law takes hold of it, and puniſhes it as High Treaſon.

Now, after this Evidence, no Man will doubt whether it was in the Heart of the Priſoner to deſtroy the King. He objects indeed, that this is but Part of a Book; and unleſs you take the Whole, nothing can be made of it. As it is in wreſting of Texts of Scripture (ſays he) you may as well ſay, that *David* ſays, *there is no God*, becauſe *David* ſays, *The Fool hath ſaid in his Heart, there is no God*. But the Application won't hold; for here you ſee a continued Thread of Argument. 'Tis not one Propoſition, but a whole Series of Argument. Theſe are his Poſitions: *That the King derives all his Power from the People: That 'tis originally in the People, and that the Meaſure of Subjection muſt be adjudged by the Parliament. And if the King does fall from doing his Duty, he muſt expect the People will exact it.* And this he has laid down as no way prejudicial to him: For, ſays he, *The King may refuſe the Crown, if he does not like it upon theſe Terms: But if he does accept it, he muſt expect the Performance will be exacted*; *or Revenge taken by thoſe he has betrayed.* He takes Notice of it alſo as a very abſurd Poſition, *That the King ſhould judge in his own Cauſe, and not the People. That would be to ſay*, (ſays the Priſoner) *that the Servant, entertained by the Maſter, ſhall judge the Maſter*; *but the Maſter ſhall not judge his Servant.* After theſe Kind of Arguments, he comes to this ſettled Poſition: *We may therefore*, (ſays he) *change or take away Kings, without breaking any Yoke, or what is made a Yoke. The Injury is in impoſing the Yoke*; *there can be none at all in breaking it.* He goes on, and, by way of Anſwer to an Objection, That if there be no Injury, yet there may be an Inconvenience, if the *headleſs Multitude* ſhould ſhake off the Yoke, ſays, *I would fain know how the Multitude came to be headleſs*; and having given many Inſtances in the Hiſtories of foreign Nations, he comes Home to the *Engliſh*, and tells you how all Rebellions, in later Ages have been headed: And, *That the Parliament is the Head, or the Nobility and Gentry that compoſe it: And when the King fails of doing his Duty* (in calling a Parliament) *the People may call one. That the Multitude therefore is never headleſs*; *but they either find, or create a Head.* So that here is a plain and avowed Principle of Rebellion eſtabliſhed, on the ſtrongeſt Reaſons he has to back it. Gentlemen, This, with the other Evidence that has been given, will be ſufficient to prove his Compaſſing the Death of the King.

In another Part of the Book, he ſays, *The Calling and Diſſolving of Parliaments is not in the King's Power.* And you all know how many Parliaments the King hath called and diſſolved: If it be not in his Power, he hath done that which was not in his Power, and ſo acted contrary to his Truſt. Gentlemen, Words ſpoken upon a Suppoſition, may be High Treaſon, as was held in the Reign of King *James* I. in the Caſe of *Collins*, in *Roll*'s Reports. The Words were; *The King being excommunicate, may be depoſed and murdered*, without affirming he was excommunicated; and this was held ſufficient to convict him of Treaſon: Now, according to that Caſe, to ſay, the King having broken his Truſt, may be depoſed by his People, is High Treaſon; but here he does as good as affirm, the King hath broke his Truſt; for every one ſees the King has diſſolved Parliaments: And this reduces it to an Affirmation.

And though this Book was not brought to the Council of Six, to be peruſed and debated there; yet it will be another, and more than two Witneſſes againſt the Priſoner: For ſuppoſe a Man was in a Room, with two other Men, and he comes to one of them apart, and endeavours to perſwade him that it is lawful to riſe in Arms againſt the King, if he breaks his Truſt; and then goes to the other, and tells him the King has broken his Truſt, and they ſeek ſome Way to redreſs themſelves,

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and perſwade the People to riſe: Theſe two Witneſſes do ſo tack the Treaſon together, that they will be two Witneſſes to prove him guilty of High Treaſon.

You have heard one Witneſs prove it poſitively, *That he conſulted to riſe in Arms againſt the King*. And here is his own Book ſays, *It is lawful for a Man to riſe in Arms againſt the King, if he breaks his Truſt:* In Effect, he hath ſaid, *The King hath broken his Truſt*. And this is a ſufficient Demonſtration, what the Imagination of the Heart of this Man was: That it was the Deſtruction of the King and Government, and indeed of all Governments; for there can be no ſuch Thing as Government, if the People ſhall be Judge in the Caſe.

I think this is ſufficient Evidence of his conſulting the Death of the King. Some Men may by Paſſion be tranſported into ſuch an Offence; but this Gentleman proceeds upon a ſurer Foundation: It is his Reaſon: It is his Principle; It is the Guide of all his Actions; It is that by which he leads the ſteady Courſe of his Life. A Man convinced of theſe Principles, what won't he do to accompliſh his Deſigns? Gentlemen, how dangerous is this Conſpiracy! how is it rooted in him! That he ſhould write it as his Principle, *That it is lawful to depoſe Kings when they break their Truſt, and that the Revolt of a whole Nation cannot be called Rebellion!* It will be a very ſad Caſe, when People act this according to their Conſciences; and do all this for the Good of the People, as they would have it thought. Gentlemen, We have proved it ſufficiently, that it was the Imagination of his Heart to deſtroy the King, and conſequently made ſufficient Proof of his being guilty of High Treaſon.

Colonel *Sidney* would have replied, but this was not permitted; it being the conſtant Courſe for the King's Counſel to conclude: And the Chief Juſtice *Jefferies* therefore proceeded to ſum up the Evidence, and obſerved, That though two Witneſſes are required to prove a Man guilty of High Treaſon, yet if two Witneſſes prove two ſeveral Facts, that have a Tendency to the ſame Treaſon; this was ſufficient, as had been adjudged in the Lord *Stafford*'s Caſe: And though ſome Judges had been of Opinion, that Words of themſelves were not an Overt-Act to prove a Man guilty of High Treaſon; yet none ever queſtioned, but a Letter would be a ſufficient Overt-Act to prove a Man guilty of High Treaſon, for *ſcribere eſt agere*.

The Chief Juſtice ſums up the Evidence.

That if the Indictment had charged him with levying War, there muſt have been a War actually levied to have convicted him of High Treaſon; but the Indictment charging him with Compaſſing the King's Death, the levying War, or Conſpiring to levy War, might be given in Evidence to prove his Compaſſing and Imagining the King's Death: For it was the Imagination of the Heart, that was the Treaſon. And when this appeared by any open, or Overt-Act, which naturally evinced, that the King was intended to be depoſed, impriſoned, or otherwiſe deſtroyed; it was a ſufficient Evidence of High Treaſon, within the 25th of *Edw.* III.

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That if there was one Witneſs to prove a direct Treaſon, and another to a Circumſtance, that contributed to that Treaſon; theſe were deemed two Witneſſes, by all the Judges of *England*, on the following Caſe, lately put to them, (viz.) *If one buy a Knife of* J. S. *to kill the King; and it be proved by one Witneſs, that he bought the Knife for that Purpoſe; and by another, that he bought ſuch a Knife of* J. S. *Theſe are two Witneſſes, ſufficient to convict him of High Treaſon.*

The Witneſſes, who knew the Priſoner's Hand, ſwearing they believed in their Conſciences, that it was his Hand, and the Papers being found in his Study, on the Table where he uſed to write, was a ſtrong Evidence of their being his.

That if the Priſoner was privy to the Letter written by my Lord *Ruſſel*, and ſent into *Scotland*, and intended to remove, or depoſe the King; theſe were Evidence againſt him: And if the Jury believed the Book found in the Priſoner's Study, to be written by him; that was more than two and twenty Witneſſes againſt him; for there he affirmed, That the King was reſponſible to the People; That he was but their Truſtee; That he had betrayed his Truſt, and miſgoverned, and now was to give it up, that they might be all Kings themſelves.

Then Mr. Juſtice *Wythens* declared, That all the Judges on the Bench concurred with the Lord Chief Juſtice in all the Points of Law, delivered by him.

He is convicted.

The Jury afterwards withdrawing; returned into Court in half an Hour's time, and brought the Priſoner in GUILTY of High Treaſon.

His Exceptions in Arreſt of Judgment.

The Colonel being brought to the Bar again to hear his Sentence, on *Mouday* the 26th of *November*, objected, that ſeveral of the Jury were not Freeholders: To which the Court anſwered, That it was the Opinion of all the Judges of *England*, that this was no Cauſe of Challenge; for by the Statute of Queen *Mary*, the Trial of Treaſon was to be as it was before at Common Law; and there was no ſuch Challenge at Common Law.

Then the Priſoner deſired the Indictment might be read again; which being granted, he obſerved, that Part of the King's Title, (viz.) *Defenſor Fidei*, was left out: To which the Chief Juſtice anſwered, the Treaſon was ſufficiently laid.

The Colonel objected further, That there was no Treaſon in the Papers ſaid to be found in his Study: The Chief Juſtice anſwered, there was ſcarce a Line in the Book, but what was Treaſon, and that was the worſt Part of his Caſe: That if he was ſo riveted in Opinion, that Kings might be depoſed, and were accountable to their People, and that a general Inſurrection was no Rebellion; it was high time, to call thoſe to an Account, that juſtified theſe Things. The Priſoner then repeated ſome other Parts of his Defence, as that Similitude of Hands was no Evidence, *&c.* and ſaid, He appealed to God and the World, he was not heard.

The Chief Juſtice anſwered, He could wiſh, inſtead of his Appealing to the World, as though he had received ſome great Hardſhip, he

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he would appeal to God, and conſider the great Guilt he had contracted, and how ungratefully he had dealt by a Prince that had pardoned him once before: Which ought to have wrought ſuch a Temper in him, as to have turned the reſt of his Life into a generous Acknowledgment of his Bounty and Mercy; and not into a State of conſtant Combining and Writing, not only to deſtroy him, but to ſubvert the Government. He was ſorry to ſee him ſo earneſt in the Juſtification of a Book, which contained the rankeſt Treaſon; which not only encouraged, but juſtified Rebellion: And then the Chief Juſtice proceeded to pronounce the uſual Sentence, in Caſes of High Treaſon. After which the Colonel ſaid: *Then, O God! O God! I beſeech thee, ſanctify theſe Sufferings unto me, and impute not my Blood to the Country, or the City through which I am to be drawn: Let no Inquiſition be made for it; but if any, and the ſhedding of Blood that is innocent, muſt be revenged; let the Weight of it fall only upon thoſe that maliciouſly perſecute me for Righteouſneſs ſake.*

Exclaims againſt his Sentence.

The Chief Juſtice thereupon ſaid, *I pray God work in you a Temper, fit to go into the other World; for I ſee you are not fit for this.*

Colonel *Sidney* replied; *My Lord, feel my Pulſe* (holding out his Hand), *and ſee if I am diſordered: I bleſs God, I never was in better Temper than I am now.*

Then the Lieutenant of the *Tower* carried away his Priſoner.

All the Sentence, but the Beheading, remitted.

As the Colonel was of a Noble Family (that of *Leiceſter*), the King was pleaſed to remit all the Sentence, but the Beheading. Whereupon he was brought to a Scaffold, erected on *Tower-Hill*, on *Friday*, the 7th of *December* 1683. When, inſtead of making a Speech, he delivered a Paper to the Sheriff, wherein he obſerved, They lived in an Age, that made Truth paſs for Treaſon: That the Lord *Howard*, the only Witneſs againſt him, was too infamous to be believed; and there was no other Evidence againſt him but the Papers, ſaid to be found in his Cloſet; and there was no other Proof of their being his, than a Similitude of Hands; but if they were his, there was nothing in them, but what might be juſtified: That God had left Nations at Liberty, to ſet up what Governments they pleaſed: That Magiſtrates were ſet up for the Good of Nations; not Nations for the Honour and Glory of Magiſtrates: That the Right and Power of Magiſtrates, in every Country, was what the Laws of that Country made them: That thoſe Laws were to be obſerved; and the Oaths taken by them, having the Force of a Contract between Magiſtrate and People, could not be violated without Danger of diſſolving the whole Fabrick: But if the Writer was miſtaken, he ought to have been refuted by Law, Reaſon, and Scripture: It was never known, that ſuch Points were referred to the Judgment of a Jury, compoſed of Men utterly incapable to comprehend them.

The Paper he left behind him.

Whatever was ſaid, in that Treatiſe, of the Expulſion of *Tarquin*; the Inſurrection againſt *Nero*; the Slaughter of *Caligula*, or *Domitian*; the Tranſlation of the Crown of *France*, from *Meroveus*'s Race to *Pepin*, and from his Dependants to *Hugh Capet*, and the like, which had been applied by *Inuendo's* to the King; if they had conſidered that, if ſuch Acts of State were not good, there was not a King in the World, that had any Title to the Crown he wore, nor could have any, unleſs he could deduce his Pedigree from the eldeſt Son of *Noah*, and ſhew that the Succeſſion had ſtill continued in the eldeſt Line, and had been ſo deduced to him.

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Then he complains of having a pack'd Jury, ſome of whom were not Freeholders; that he had not a Copy of his Indictment, or Counſel allowed him; and that he was condemned for Facts they made Treaſon, by Conſtruction, or Inferences, which none but the Parliament could do; and by ſuch means, he obſerved, he was brought to that Place; concluding in the following Words.

Grant that I may die, glorifying thee for all thy Mercies; and that at the laſt, thou haſt permitted me to be ſingled out as a Witneſs of thy Truth; and, even by the Confeſſion of my Oppoſers, FOR THAT OLD CAUSE, IN WHICH I WAS ENGAGED FROM MY YOUTH, AND FOR WHICH THOU HAST OFTEN AND WONDERFULLY DECLARED THY SELF. Having delivered this Paper to the Sheriff, he ſubmitted to the Block, and the Executioner did his Office.

He is beheaded.

Some Account of him.

This Gentleman took up Arms, when he was very young, againſt King *Charles* I. and deſerved ſo well of the Uſurpers, that he was nominated one of that King's Judges. At the Reſtoration, he did not take Advantage of the Act of Oblivion, but remained in Baniſhment, till the Year 1677, when he returned to *England*, and obtained a particular Pardon for himſelf, upon his repeated Engagements, to remain his Majeſty's faithful Subject for the future; but how he employed his Time afterwards, is pretty evident from this Trial. Biſhop *Burnet* relates, that he was attended by ſome Independant Teachers, in his laſt Moments; which ſhews he was of that Sect.

Remarks on Colonel Sidney's *Trial.*

Mr. Solicitor *Finch*'s Reply to Colonel *Sidney*'s Defence, ſeems to me to be unanſwerable; and therefore I ſhall only obſerve in Confirmation of that great Man's Arguments, that moſt of the Things the Colonel and his Friends complained of, (if not all) have been practiſed and defended by thoſe very Lawyers, at ſeveral Trials, ſince the Revolution, who ſo loudly complained of ſuch Practices before.

At the Trial of Sir *John Friend*, *Anno* 1695, the Lord Chief Juſtice *Holt*, in his Directions to the Jury, declares, That if there be a Conſpiracy to kill the King; to depoſe, or impriſon him; or to put any Force, or Reſtraint upon him; and the Method intended to effect this, is by Levying War; there, the Conſultation, or Conſpiracy to levy War for that Purpoſe, is High Treaſon, though no War be levied. *That this ſhould not be High Treaſon, unleſs a War be actually levied, is very ſtrange Doctrine; and the contrary has always been held to be Law.*

And yet Sir *John Hawles*, who was Counſel at this very Trial for the King, ſpent a great

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great deal of Paper, in his Remarks on the Trials of Lord *Ruſſel*, *Sidney*, *&c.* in endeavouring to prove what the Lord Chief Juſtice ſays, at Sir *John Friend's* Trial, *was very ſtrange Doctrine, and the contrary always held to be Law.*

In the Trials of Sir *William Parkins*, *Rookwood*, and *Cook*, the ſame Year, the Chief Juſtice maintains, *That the Conſpiring to invade the Realm, or to depoſe the King, were Overt-Acts of High Treaſon, within the 25th of Edw.* III. *and of the ſame Species of Treaſon as the deſigning to murder him.* The Chief Juſtice alſo declares, *That if there was one Witneſs to one Overt-Act, and another Witneſs to another Overt-Act of the ſame Species of Treaſon, that was all the Law required.*

The Lord Chief Juſtice *Treby* declared at the ſame Trial, That the Conſpiring with a foreign Prince to invade the Realm; the providing Arms, to join with the Invaders, and make an Inſurrection againſt the King, were Overt-Acts of Conſpiring his Death. *He that would cauſe an Invaſion, or Inſurrection againſt the King's Perſon, muſt be preſumed to deſign his Ruin and Murder.*

When Sir *John Friend* moved in Arreſt of Judgment, That he was convicted by one Witneſs, becauſe the other Witneſs only ſwore to a Conſpiracy to levy War, which he apprehended was not Treaſon, unleſs War was actually levied; All the Judges on the Bench told him, they were agreed, That a Conſpiracy to levy War to depoſe the King, was Treaſon; or a Conſpiracy to invade the Realm, was Treaſon. And as to there being two Witneſſes to every Overt-Act, the Statute of the 7th of *Will.* III. Cap. 3. for regulating Trials of Treaſon has put the Matter beyond all Doubt declaring the Law to have been, and enacting that it ſhall always be conſtrued ſo for the future, *That one Witneſs to one Overt-Act, and another to another Overt-Act of the ſame Treaſon, ſhall be ſufficient.*

And laſtly, As to the proving the Papers, or treaſonable Libel, to be the Colonel's, *by Similitude of Hands, and their being found in his Cuſtody*; the like Evidence was given againſt the Lord *Preſton*, after the Revolution, in the Year 1690; and held to be good Proof, that the Papers were his: Nay, the Proof was not ſo ſtrong, as in *Sidney*'s Caſe; for there the Papers were found in his Study, on a Table where he uſed to write; and in the Lord *Preſton*'s Caſe, the Papers were found in the Hold of the Ship, where his Lordſhip was; but not upon him.

Thus, we ſee the Judges and Lawyers in all Reigns, find it neceſſary to ſupport theſe Maxims, in Order to ſupport the King, on his Throne, how much ſoever they were clamoured at, when declared to be Law at the Trials of Lord *Ruſſel*, *Sidney*, *&c.* And the Lord *Sidney*'s Friends are ſo from denying the Libel to be his, at this Day, that they have printed and publiſhed it, as his, ſince the Revolution; and ſeem to adore his Memory for the Principles laid down in it, and his Deſign of propagating thoſe Principles, by that Libel.

It remains, therefore only to conſider, Whether the Maxims advanced in that bleſſed Piece, were really treaſonable, or conſiſtent with, and agreeable to the Laws and Conſtitution of this Kingdom; and ſuch as were *neceſſary* to be propagated and maintained, for the Preſervation of our Rights and Liberties.

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Thus far I agree with the Colonel, That no particular Form of Government is *Jure Divino*; but whatever Government we find eſtabliſhed in any Country, ought to be obeyed:

And, That the Right and Power of Magiſtrates, in every Country, is what the Laws of that Country make them to be.

But then as to the next Article, That the Oath taken by the Prince, at his Coronation, and the Oath of Allegiance, taken by the Subject, are in the Nature of a Contract between King and People, and cannot be violated without Diſſolving the Government; this I muſt deny; eſpecially, as he makes every Man a Judge of this Violation: (For if he does not, it will not come up to his own Caſe, who could not pretend to have the Authority of either Lords or Commons; of either Houſe of Parliament, to juſtify this Conſpiracy, to depoſe the King: Only his own Opinion, and that of an inconſiderable Faction, his Accomplices: The Bulk of the Kingdom were Loyal, and for continuing the King upon his Throne.)

Now, that the King's Coronation Oath, is not of the Nature of a Contract, and every Breach of it a Forfeiture of his Kingdom, is evident; becauſe by our Laws a Man may be guilty of High-Treaſon before the King is crowned: And there is no limited Time ſet for the King's Coronation, but he may defer it as long as he ſees fit. The People owe Allegiance to him, and are obliged to take the Oaths to him, though he be not crowned.

And though the Col. lays great Streſs on that Maxim, *That Princes and Governors are appointed for the Good of the People, and not for their own Glory*; yet neither will this juſtify every private Man, or every little Faction conſpiring againſt the Government, whenever they apprehend themſelves aggrieved, or that their Governors do not act for the Good of the Nation, or agreeable to the Laws: For, if this was admitted, no Government, whether Monarchical or Republican, could ſubſiſt; for there will be always ſome Malcontents, in all Countries, who will think themſelves aggrieved by the Adminiſtration: Nor would this Maxim contribute to the Peace and Happineſs of Mankind; for if one Part of the Nation ſhould be of Opinion that the Adminiſtration was legal and beneficial, and the other of a contrary Opinion, what Confuſion muſt this Doctrine create? Every People muſt be in a perpetual State of War among themſelves: It is very fit therefore, for the Sake of the Subjects themſelves, that they ſhould not have a Power of calling their Kings or Governors to an Account, and depoſing them whenever the Adminiſtration is not ſuitable to their Taſte. Ask the *Dutch*, or the *Venetians*, how they would reliſh ſuch depoſing Doctrines; or indeed, whether they ever ſuffer ſuch to be broached in their Territories? And whether a People have one or many Governors,

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vernors, this can make no Alteration in the Terms of their Allegiance, unleſs the Laws of their reſpective Countries make any: If the four and twenty Burgomaſters of *Amſterdam*, in whom the Sovereign Power is veſted there, ſhould in the Opinion of any of their Subjects ſtudy their own Intereſt and Glory, more than that of their People, they might according to this Maxim be depoſed, as well as a King of *England*. But I do not doubt, the States of that City would make no Scruple of convincing the Author of any ſuch Doctrine of his Error, by the Ax or the Halter.

Sure I am, our Laws make no Exceptions in Favour of thoſe who conſpire to dethrone their Prince; nor would it be any Anſwer to an Indictment or Charge of High-Treaſon, that the Party did not think the King's Adminiſtration was for the Good of the People, or agreeable to the Conſtitution: I would not adviſe my Friends and Fellow-Subjects therefore to depend upon ſuch a Plea, in any Reign.

Biſhop *Burnet* ſays, Colonel *Sidney* met Death, as became one who had *Marcus Brutus* for his Pattern. But there ſeems to have been this remarkable Difference between *Brutus* and *Sidney*; That *Brutus* fought in Behalf of a glorious Commonwealth, that had been eſtabliſhed ſeveral Centuries, without any Diſpute, Claim, or Pretence of Title by any other; whereas *Sidney* conſpired to deſtroy his lawful Sovereign, and Monarchy with him, under which Form of Government this Kingdom had flouriſhed for Time immemorial, and where a Republican Form of Government was never heard of, unleſs in the Reign of the *Regicides*, whom he ſeemed ſo fond of imitating. In one Word, *Brutus* fought to maintain the Laws and Conſtitution of his Country; and *Sidney* conſpired to ſubvert thoſe of his; which is exremely like ſome of the reſt of Biſhop *Burnet*'s Parallels.

This Judgment was reverſed after the Revolution, in which the Colonel's Family were very Inſtrumental.

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Braddon's *Trial.*

The Trial of LAURENCE BRADDON and HUGH SPEKE Gentlemen, for a *Miſdemeanor*, at the *King's-Bench-Bar*, the 7th of *February*, 1683, *Hill.* 36 *Car.* II.

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The Information.

AN Information was preferred againſt the Defendants, *Laurence Braddon* and *Hugh Speke*, by Mr. Attorney-General Sir *Robert Sawyer*, which recites; That whereas *Arthur*, late Earl of *Eſſex*, was on the Tenth of *July*, in the 35th Year of the King, committed to the *Tower* for High-Treaſon; and on the 13th of the ſame Month, murdered himſelf, as appeared by the Coroner's Inquiſition: The Defendants, *Laurence Braddon* and *Hugh Speke*, knowing the Premiſſes, and deſigning to bring the Government into Hatred and Contempt; did on the 15th of *Auguſt*, in the Year aforeſaid, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, maliciouſly conſpire, to make his Majeſty's Subjects believe, that the ſaid Inquiſition was unduly taken; and that the Earl did not murder himſelf, but was murdered by the Perſons to whoſe Cuſtody he was committed; and that the ſaid Defendants did conſpire to procure certain falſe Witneſſes to atteſt the ſame; and to induce the King's Subjects to believe theſe Reports, did maliciouſly declare in Writing, that the ſaid *Laurence Braddon*, was the Perſon that did proſecute the ſaid Earl's Murderers: To the great Scandal of the Government againſt the King's Peace, *&c.*

The Coroner's Inqueſt read.

Then the Warrant for the Earl's Commitment, and the Inquiſition taken before the Coroner were proved: By which Inquiſition, taken the 14th of *July*, it was found, that the ſaid *Arthur* Earl of *Eſſex*, on the 13th of *July*, in the 35th Year of the King, about Nine of the Clock in the Forenoon, being alone in his Chamber in the *Tower*, did feloniouſly cut his Throat with a Razor, from one Jugular Vein to the other, of which Wound he inſtantly died.

The Witneſſes being called, Mr. *Evans* was ſworn, and depoſed, that about Eleven a Clock, that Morning the Earl of *Eſſex* cut his Throat, *Edwards*, a Cuſtom-Houſe Officer, told him, he had heard from Home, that his Son ſaw a Hand throw a Razor out of the Earl of *Eſſex*'s Window that Morning; and that *Edwards* came to him again in the Afternoon and told him, he had examined into that Matter, and his Boy confirmed the Truth of it.

Evans's *Evidence.*

Mr. *Edwards* being ſworn, depoſed that about Ten, on the 13th of *July* in the Morning, he was informed by his Family, that his Son ſaid, he had been at the *Tower*, and ſeen his Majeſty and the Duke of *York*; and that the Earl of *Eſſex* had cut his Throat: And he (the Boy) ſaw a Hand throw a Razor out of the Window, and a Maid or Woman came out of the Houſe and took it up, and went in again; and then he heard a Noiſe, as of Murder, cried out: Mr. *Edwards* depoſed further that his two Sons, of which this was the younger, were going together that Morning to *Merchant-Taylors* School, as they uſed to do; and hearing by the Way, that the King was at the *Tower*, the younger Boy gave the Elder Brother the Slip, and went to the *Tower*, where he rambled about from Place to Place: That examining the Boy afterwards, as to the Truth of his ſeeing a Razor thrown out of a Window, he did not deny it, till the Defendant *Braddon* came to his (the Witneſs's) Houſe, to enquire concerning that Report: That he (the Witneſs) begg'd of Mr. *Braddon*, that he would take no notice of the Matter; but he was ſo zealous as that nothing would ſatisfy him: That leaving Mr. *Braddon* at his Houſe, till he went to the *Cuſtom-houſe*, ſome of his Family talked to the

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the Boy at that Rate, that he began to deny he had ſeen any ſuch Thing; but in half an Hour he owned it again; and ſo the Boy was off and on, till the Time he was carried before the Council; and at this Day, he ſeemed to ſtand to his Denial; but whether he would now do it or no, he could not tell.

The Court demanding, If he did not acquaint Mr. *Braddon*, the Boy was a lying Boy? *Edwards* anſwered, he acquainted him with as much, and told him, he would not undertake to aſſert the Truth of the Story; for his Daughter told him, the Boy had often excuſed his playing Truant by falſe Stories.

The Court then demanded, If he talked of this Matter before he went Home? *Edwards* anſwered, he ſtepped Home, being very near his own Houſe, and as ſoon as he came in at the Door, the Family began to give him an Account what News the Boy brought in: He could not diſcourſe of it before, unleſs he had been the Contriver of the Story; to which Mr. Attorney replied, ſo it is like enough you were.

Then *Evans* was called again, and confronted with *Edwards*; and ſaid, he thought Mr. *Edwards* ſaid, he had the Story from Home, but did not go Home; and at two a Clock he came to the Company again, and ſaid he had now been at Home, and the Boy had told him the ſame Story he had heard in the Morning: But ſtill *Edwards* perſiſted, he did not tell *Evans* any thing till he had been at Home the firſt Time, and then he had it from his Family.

Being ask'd, If ever *Braddon* tendered his Son a Paper to ſign? *Edwards* anſwered, he he had heard ſo, and that he did ſign it; and *Braddon* told him, before his Son ſigned it, that he had other Evidence beſides his Son's: That he never ſaw *Braddon* before the 17th of *July*, when he firſt came to his Houſe about this Matter.

Edwards *the Son his Evidence.*

Then *William Ewards* the Boy was ſworn; and his Father charging him to ſpeak the Truth, and nothing but the Truth, the Chief Juſtice bid him turn about, and exhort his Father to ſpeak nothing but the Truth.

A Paper being then produced in Court, and the Boy asked, If he ſet his Name to it; He anſwered, Mr. *Braddon* enquired of him, if he ſaw any Thing at the *Tower*; and he told him, Yes, he was in the *Tower*, and ſaw a Razor thrown out of a Window: That he afterwards went with his Brother to the *Tower*, and ſhewed him the Place, and Mr. *Braddon* wrote this down as he told it him.

The Court demanding, if he refuſed to put his Name to it; he anſwered, yes; he was afraid of coming into Danger.

The Chief Juſtice replied, why ſo? What Danger could there be, if it was Truth? The Boy ſaid, *That was not the Truth which he told him:* The Court demanded, how he came to ſign it afterwards then? The Boy anſwered, he perſuaded me, and ſaid there was no Harm in it; and would have had my Aunt ſign it.

Being asked, If he told Mr. *Braddon* it was falſe? He ſaid, No.

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It was then demanded of him? What he told his Father before *Braddon* came to their Houſe? The Boy anſwered, he told his Father, the King and the Duke of *York* were at the *Tower*, and while he was there, he ſaw a Hand caſt out a bloody Razor; and a Maid came out and took it up, and went in again: Being asked, if he really did ſee a bloody Razor caſt out; he anſwered, No.

Hawkins's *Evidence.*

Then, young *Hawkins*, the Son of Doctor *Hawkins*, who play'd Truant that Day with *Will. Edwards*, was ſworn as a Witneſs, and depoſed, that he met with *Edwards* that Morning in the *Tower*, and they walked round the *Tower* as long as the King walked, and then the King going into the Conſtable's Houſe, they went to play with ſome other Boys; after which he went home to his Father's Houſe in the *Tower*; and in a little Time, News was brought to his Father that the Earl of *Eſſex* had killed himſelf: That thereupon, his Father went down, and he (young *Hawkins*) followed him; and after he had been at the Place a little while, *Will. Edwards* came to him, and they ſtood looking up at the Window, an Hour or two at leaſt; and about Eleven, he and young *Edwards* went away together out of the *Tower*-Gate; but there was no Razor thrown out of the Window, neither did young *Edwards* mention any ſuch Thing.

Then *Will Edwards* was called again, and confronted with *Hawkins*; and it being demanded of him, if young *Hawkins* was with him all the while he was in the *Tower*; he anſwered, yes, except a little Time he was at the Mills.

The Clerk of the Council's *Evidence.*

Mr. *Blathwaite*, one of the Clerks of the Council, being ſworn, depoſed, That Mr. *Braddon*, and young *Edwards*, being brought to *Whitehall* the twentieth of *July*, and the Boy being asked before his Majeſty, if the Matter in the Information was true? The Boy anſwered, It was a Lie; upon his Faith it was not true: And Mr. *Braddon* being called in, and told what he ſaid, it appeared to have been an Invention of the Boy's, to excuſe his playing Truant that Day.

He depoſed further, That Mr. *Braddon* having been in the Country, was again examined before the King upon this Matter; by which it appeared he continued his Purſuit: And the Words in the Minutes, which he, *(Blathwaite,)* took, at the Examination of one of *Edwards*'s Siſters, were, *That* Braddon *compelled the boy to ſign it.*

The Under-Secretary's *Evidence.*

Mr. *Monſtevens*, being ſworn, depoſed, That about five or ſix Days after the Lord *Eſſex* had murdered himſelf, *Braddon* came to the Lord *Sunderland*'s Office, (who was Secretary of State) at *Whitehall*, with a young Woman, and a Boy about 12 or 13 Years of Age; and *Braddon* told this Witneſs, that he had earneſt Buſineſs with my Lord *Sunderland*, and came from Sir *Henry Capel*, having an Information that the Boy had given relating to the Earl of *Eſſex*'s Death; and the Deponent demanding, Why Sir *Henry Capel* did not appear himſelf, in a Matter that ſo much concerned the Reputation of his Family, *Braddon*, ſaid, He was not well; and added, that what he *(Braddon)* did, he was obliged

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to do, out of Conſcience, and the Duty he owed to the Memory of the Earl of *Eſſex*: That the Deponent thereupon went with *Braddon* to my Lord *Sunderland*, and his Lordſhip having taken the Information, *Braddon* was committed to Cuſtody, and brought before the King and Council.

The Court then demanded of young *Edwards*, If he never told any body, he was in my Lord *Brandon Gerrard*'s Lodgings in the *Tower*: To which the Boy anſwering, *Never in his Life*, the Information that *Braddon* had drawn up for the Boy to ſign, was ordered to be read.

The Information ſigned by young Edwards.

In this Information, the Boy ſays, Hearing his Majeſty and the Duke were in the *Tower*, on *Friday* the thirteenth of *July*, he ran thither; and when he had ſeen his Majeſty, he went to the Lord *Brandon Gerrard*'s Lodgings; and as he was ſtanding between them and the Lord *Eſſex*'s Lodgings, he ſaw a Hand caſt out a bloody Razor, out of the Lord *Eſſex*'s Lodgings; and that, as he was going to take up the Razor, a Maid run out of Captain *Hawley*'s Houſe, took up the Razor, and carried it into the Houſe; and he believed it was this Maid, that firſt cried out Murder: That he alſo heard the Maid ſay, after Murder was cried, that ſhe heard the Lord *Eſſex* groan three Times that Morning.

Sir Henry Capel's *Evidence.*

Sir *Henry Capel* then being ſworn, the Court asked him, If he ever employed *Braddon* about any ſuch Buſineſs, as he had undertaken? He anſwered, *Braddon* was twice to ſpeak with him; the firſt Time he was in ſuch Diſorder, that he did not know well what he ſaid; the ſecond Time, *Braddon* ſpeaking of ſuch a Buſineſs, he told him, he was under great Grief, and under a great Burthen of Buſineſs, in his private Family; and whatever he had to ſay in the Matter, he deſired he would acquaint a Secretary of State with it. Being asked, if he deſired *Braddon* to go to *Edwards*'s Houſe, Sir *Harry* anſwered, He knew nothing of *Edwards* or his Houſe.

Mr. *Blathwaite* alſo teſtified, That when *Braddon* was before the King, he confeſſed, he had gone about to find ſome Juſtice of the Peace, to take the Information upon Oath, and named Sir *Robert Clayton*, and Sir *John Lawrence*; and becauſe Sir *Robert* refuſed to take it in private, he would not let him take it at all, but went away with it.

Beech's *Evidence.*

Beech the Meſſenger, depoſed, He apprehended *Braddon* in *Wiltſhire*; and among other Papers found upon him, was a Letter of Mr. *Speke*'s, (the other Defendant) directed to Sir *Robert Atkyns*; and another from one *Burgis* of *Marlbrough*, directed to *Compten*, Poſt-Maſter at *Frome*, to enquire concerning a Report, that was there the thirteenth of *July*, that the Earl of *Eſſex* was murdered, being the ſame Day he murdered himſelf.

Speke's *Letter read.*

Then *Speke*'s Letter, dated the fifteenth of *Auguſt*, was read, the Purport whereof was to acquaint Sir *Robert Atkyns*, that *Braddon* was the only Perſon who proſecuted the Earl of *Eſſex*'s Murder: That he was qualified for ſuch an Undertaking, being a Perſon of good Reputation, Prudence, and great Courage: That he was going Poſt to *Marlbrough* to make a further Diſcovery, and he lent him his Man; for he was afraid he would be ſtabbed, or knocked on the Head; and that he had directed him to wait on Sir *Robert*, ſince he was to go ſo near him, and adviſe with him how he had beſt proceed; deſired he would conceal *Braddon*'s being there, leſt it ſhould be a Prejudice to Sir *Robert*; and he hoped they ſhould bring the Earl of *Eſſex*'s Murder upon the Stage, before they could bring any of thoſe in the *Tower* to a Trial: He alſo informs Sir *Robert*, that *Braddon* went by the Name of *Johnſon*; and that he, (the Writer) had received a Letter from Sir *Robert* that Day, with a Letter incloſed for the Lady *Ruſſel*, which he ſealed up, and carried to her; and my Lady returned him ten thouſand Thanks for his Kindneſs, and the great Pains he had taken.

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Lodeman *the Girl's Information read.*

The Information of *Jane Lodeman*, aged thirteen Years, alſo was read, importing, that ſhe was in the *Tower* on the thirteenth of *July*; and ſtanding over-againſt the Window of the Earl of *Eſſex*'s Lodging, ſhe ſaw a Hand caſt a Razor out of the Window, and heard Shrieks; and that a Soldier at the Door, cried out to thoſe in the Houſe, that they ſhould come and take up the Razor, and a Maid came out of the Houſe in a white Hood; but who took up the Razor ſhe could not tell. *Which Paper alſo was found about Mr.* Braddon *when he was taken.* Another Letter from *Burgis*, to *Compten* at *Frome*, that was found about him alſo, was read; wherein *Burgis* deſires *Compten* to call to Mind that he was at *Frome*, the ſixth of *July*, being *Friday*; and then heard the Report, that the Earl of *Eſſex* had cut his Throat; and that he would enquire, who firſt reported it; and give the Bearer an Account of it.

The Defence.

Here Mr. *Wallop* and Mr. *Williams*, the Defendant's Counſel, urged in their Behalf, That what they had done, was not with any malicious or factious Deſign; nor did they go about to procure theſe Informations, but heard of the Facts accidentally: And, if they had gone a little out of the Way, and taken theſe Examinations in Writing, in order to lay them before the Secretary of State; they hoped this was no Crime, if they did not do it ſeditiouſly; but only with an Intention, that Mr. Secretary might receive a fuller Information.

Then the Defendant's Witneſſes were called, one of whom ſaid, As he was upon the Road, he heard the Earl of *Eſſex* had cut his Throat: Another ſaid, He heard ſo at *Andover*, the *Wedneſday* or *Thurſday* before it was done.

Sarah Edwards's *Evidence.*

Edwards and his Wife being examined again by *Braddon*, gave much the ſame Evidence *Edwards* had given before; and then *Sarah Edwards*, the Boy's Siſter, depoſed, That *Braddon* came the *Tueſday* after the Lord *Eſſex*'s Death, and told her Father, he came from Sir *Henry Capel* and the Counteſs of *Eſſex*, to know the Truth of her Brother's Report: That her Father told him, the Boy had reported ſuch a Thing; but he would not affirm the Truth of it, for he was apt to tell Lies, to excuſe his playing Truant: That when the Boy came from School, ſhe bid him be ſure to tell the Truth; whereupon he aſk-

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ed, If any Harm would come of it? And ſhe anſwered, She did not know; but a Gentleman had been to enquire about it: And then the Boy denied it; whereupon they were all daunted: And *Braddon* coming again ſoon after, bid the Boy ſpeak Truth; telling him what a dreadful Thing it was to be a Liar; that he ſhould read the fifth Chapter of the *Acts*, where two were ſtruck dead for lying: And that *Braddon* coming again the *Wedneſday* following, the Boy owned it again; whereupon *Braddon* wrote down what the Boy told him, and went away, ſaying, he would go to Sir *Henry Capel*, and the Counteſs of *Eſſex*: That the next Day *Braddon* came again, bringing a Paper he had written over, and the Child ſet his Hand to it; but it was not the ſame Paper *Braddon* wrote at their Houſe: The Boy was unwilling to ſign it; but he ſaid, It would be no Harm to him: If there was any Danger, it would be to himſelf.

Braddon demanding of her, Why the Boy ran to his Mother, and cried he ſhould be hanged? ſhe anſwered, the Child had ſuch a Fear and Dread upon his Spirits, knowing it to be a Lie he had told, ſhe ſuppoſed.

Mr. *Wallop* demanded, If they did not tell him his Father would loſe his Place? and ſhe anſwered, They did.

Lodeman's *Evidence.*

Jane Lodeman, the Girl of thirteen Years of Age, being called, depoſed, That between nine and ten in the Morning, the Day the Earl of *Eſſex* died, ſhe ſaw a Hand throw a Razor out of the Window, and heard two Shrieks and Groans preſently after; and the People ſaid it was the Earl of *Eſſex*'s Lodging: That the Razor fell within the Pales; and ſhe ſaw a Woman come out in a white Hood; but could not tell, whether ſhe took up the Razor or not: That ſhe ſaw the Razor only as it was flying, and it appeared open and very bloody: She did not ſee it upon the Ground; but was ſure it was a Razor, and not a Knife.

Then the aboveſaid Information was read, atteſted by thoſe who heard her tell the Story to *Braddon:* Whereupon the Chief Juſtice obſerved, That the Information ſaid, ſhe heard the Soldier cry out; but here, ſhe ſaid ſhe did not know of any Soldier, or heard any body ſpeak to the Maid, as ſhe related there.

The Girl being asked, If Mr. *Braddon* carried her before a Juſtice of Peace; ſhe anſwered, No; he took the Information himſelf.

Beech the Meſſenger, depoſed, That he asked the Poſt-Maſter of *Frome*, if there had been any Rumour there, concerning the Earl of *Eſſex*'s Death, on the Day it happened, as was reported; and that the Poſt-Maſter anſwered, there was no ſuch Report in that Town, till the *Sunday* after his Death.

Mr. Speke's *Evidence continued.*

Then Mr. *Thompſon*, Counſel for Mr. *Speke*, ſaid, That his Client was no otherwiſe concerned in the Matter, than writing the ſaid Letter to Sir *Robert Atkyns*, ſending it by Mr. *Braddon*, and lending him his Man: To which the Counſel for the King anſwered, That the Letter was written in ſuch a Strain, as ſhewed, he had a conſiderable Share in the Contrivance; for he ſaid in it, *We row againſt the Stream: We thank you for your Kindneſs to us: We hope to bring on the Trial of the Earl of* Eſſex's *Murder, before they can any of thoſe in the* Tower.

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Mr. *Speke* ſaid, Mr. *Braddon* came to him late at Night, when he had been drinking a Bottle of Wine; and he hardly knew what he wrote: Mr. *Wallop* his Counſel alſo ſaid, He might believe, from what *Braddon* told him, there were probable Grounds to go upon; but he knew nothing himſelf, and deſired the Jury would obſerve, there was no Contrivance proved againſt him.

Then Mr. Attorney ſaid, They ſhould ſhew that it was impoſſible for any Man, unleſs the moſt malicious, and villainouſly inclined againſt the Peace and Government of the Kingdom, to ſpread ſuch a Report; and called Mr. *Bomeney*, the Lord *Eſſex*'s Gentleman, to give an Account of the Matter, who had lived with his Lordſhip ſix Years; and attended him in the *Tower* at the Time of his Death.

Bomeney's *Evidence for the King.*

Bomeney depoſed, That he attended his Lord to the *Tower*, and waited on him there: That his Lordſhip asked him for a Pen-knife to cut his Nails; but that coming away from home in Haſte, he had not brought one: However, when he ſent the Footman to the Steward for Proviſions the next Morning, *he wrote to the Steward to ſend a Pen-knife:* That his Lord asked, if it was not come? and when he told him it was not, he bid him bring him one of his Razors, which would do as well; and he carried his Lord a Razor, who walked with it in his Hand about the Chamber: That the Deponent, in the mean time, ſtepped into the Paſſage, and talked with *Ruſſel* the Warder at a Window, and ſaw the King was in the *Tower:* That a little while after, he (the Deponent) went down, and the Footman returned with the Proviſions and a Pen-knife: He brought alſo a Note, which the Deponent carried up to his Lord's Chamber, but found Nobody there: And there being a Cloſet in the Room, in which was a Cloſe-ſtool, he thought my Lord was there, and went down therefore a little while, and then went up again; and finding the Cloſet Door ſhut ſtill, he knocked three Times, and called his Lord, but Nobody anſwered: Then he looked through a Chink of the Door, and ſaw Blood, and Part of the Razor; whereupon he called the Warder, and the People of the Houſe; and *Ruſſel* the Warder came up, and puſhed againſt the Door, but could not open it far, becauſe my Lord's Feet were againſt the Door: That it was a very ſmall Cloſet; the Cloſe-ſtool and the Length of a Man would fill it: That his Lord lay all along on his Side, and the Razor by him: There was a Window in the Cloſet, and, he thought, a Caſement that opened into a little Yard.

It being demanded, If he obſerved his Lord to be melancholly; he anſwered, Yes, he was melancholly, but they took no notice of it; for he uſed to be ſo, and they had no Reaſon to ſuſpect any thing more than ordinary.

The Warder's Evidence.

Ruſſel the Warder, being ſworn, depoſed, That on the Morning the Earl killed himſelf, he was in the Chamber oppoſite to my Lord's Chamber: That the Stairs came up between the two Doors, which being both open, he could

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could ſee plainly into the Room: That he heard my Lord ask *Bomeney* if the Pen-knife was come, and he ſaid, No: Then ſaid my Lord, Lend me your Razor, that will do it; and my Lord took the Razor in his Hand, and went two or three Turns in the Room: By and by *Bomeney* went down, and my Lord ſhut the Door to him: A little while after *Bomeney* came up, and my Lord being gone to Stool in the Cloſet, as he ſuppoſed, he went down a ſecond Time, and ſtaid about a Quarter of an Hour.

The Court demanded, If any Perſon had been there, from the Time *Bomeney* went down, to the Time he came up again: *Ruſſel* anſwered, No; but that *Bomeney* coming up again, and finding his Lord not come out of the Cloſet, he put by the Hanging, and ſaw my Lord lying in his Blood in the Cloſet: Whereupon *Bomeney* made a great Noiſe; and he (*Ruſſel*) came up, and finding the Key on the out-ſide of the Door, opened it a little; but could not puſh it quite open, becauſe my Lord's Legs lay againſt the Door: That there was a Window in the Cloſet that looked into a back Yard, which was paled in, and there was only one Door that went into it out of the Houſe: Nobody could come into that Yard, without coming through Captain *Hawley*'s Houſe.

The Centinel's Evidence.

Lloyd the Centinel, who ſtood at the Door of the Lord *Eſſex*'s Lodgings, was ſworn, and depoſed, That he ſaw the Lord *Eſſex* at the Caſement in the Morning; and he asked, what o' Clock it was: That he ſaw him alſo when the Lord *Ruſſel* went by; and about half an Hour after, a Cry was made, that Lord *Eſſex* had killed himſelf: That there was no Razor thrown out; no Maid came out of the Houſe; nor did he call to any one; and there was no other Soldier at the Door at that Time, but himſelf.

It being demanded, If any body came into the Houſe that Morning; he anſwered, Nobody came in while he ſtood there.

Hawley's *Evidence.*

Captain *Hawley* being ſworn, depoſed, That ſtanding at the *Tower* Gate that Morning, the Warder came and told him, the Lord *Eſſex* had killed himſelf, whereupon he went up Stairs, and coming to the Cloſet could not open the Door far, but looked in, and ſaw the Razor bloody, and my Lord lying on his Arm; and the Conſtable was called, to come and examine the Servants.

That the Houſe having ſettled, the Caſement in the Cloſet could not be opened far; and beſides, it was ſo low, and the Pales before the Window ſo high, that it was impoſſible to throw any thing out of the Window three Foot, they could not throw any thing out of the Window to be ſeen *(in the Street, I ſuppoſe he means; the little Yard being encloſed with high Pales, and had no Door into it out of the Street.)*

The Defence continued.

Then Mr. *Speke* called his Servant as a Witneſs, who atteſted, That he had never ſeen Mr. *Braddon* but once at his Maſter's Chambers, before he wrote the aboveſaid Letter: And Mr. *Speke* obſerved, That it had not been proved, he had conſpired with *Braddon* to procure falſe Witneſſes, as was laid in the Information; but that it appeared he was ſurprized when he wrote the Letter, by *Braddon*'s making him believe that to be true, which was not; and that he wrote it late at Night, after he had been at the Tavern.

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Braddon alſo obſerved upon the Evidence, That it had not been proved he had uſed any ill Arts to perſuade the Witneſſes to teſtify what was falſe, but had dealt with all the Caution and Candour imaginable; and deſired the Jury would take no Notice of what had been ſaid, or ſhould be ſaid, that was not proved.

Directions of the Chief Juſtice.

Then the Lord Chief Juſtice proceeded to direct the Jury; and among other Things ſaid, that the Crime Mr. *Braddon* was accuſed of, carried all the Venom and Baſeneſs, and the greateſt Inveteracy againſt the Government, that ever any Caſe did; for it was inſinuated, that, becauſe the King and the Duke were walking in the *Tower* that Day, and near that Time when this unfortunate Thing happened, the King and the Duke had deſigned this Murder.

That as to the Corrupting of Witneſſes, though *Braddon* did not get any Witneſſes ſworn, and ſo it was no Subornation of Perjury; yet however it was a Miſdemeanor to labour any one, eſpecially ſuch a Child, into a Falſity, as apparently he did; and preſſing the Boy to ſign the Paper, when he refuſed it.

Had it been a Thing of Indiſcretion only, without Malice, and had there been no Caution given him about it, as a Thing that did not concern him, there might have been ſomething ſaid to alleviate it: But for him to come, as if he had Authority from the Counteſs of *Eſſex* and Sir *Henry Capel*, who denied they ever gave him any ſuch Authority, ſhewed the Malice of his Deſign.

As to Mr. *Speke*, If he did write the Letter above-mentioned, with a Deſign to ſpread the Calumny, he made himſelf a Party to the general Deſign; though not equally Guilty, as to the Management of the Witneſſes: But if they were of Opinion he was ſurprized into the Thing, and did it innocently, or ignorantly, they ſhould acquit him, though he ſeemed to have been very zealous in proſecuting the Buſineſs.

Remarks on Braddon's *Trial.*

The Faction it ſeems were very zealous in proſecuting the Buſineſs.

The Faction, it ſeems were very zealous in promoting that Calumny, that the Earl of *Eſſex* was murdered by thoſe that had him in Cuſtody,----by the Direction of the Duke of *York:* They went ſo far, as to ſay, that the King and the Duke went to the *Tower* that Morning, on Purpoſe to countenance the Fact: But ſurely, if they had been at the Bottom of it, they would rather have choſen to have been at a greater Diſtance from the Place where it was executed. Biſhop *Burnet*, for whom the Party profeſs a moſt profound Veneration, gave up the Story as a Forgery; after he had narrowly enquired into it: And as he had better Opportunities of informing himſelf of the Truth of the Fact, than any other Man could have; and was employed by the Lady *Eſſex* for that Purpoſe; one would think the Faction ſhould not have the Aſſu-

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Bp. Burnet's *Reflections on the Earl of* Essex's *Death.*

rance to repeat the malicious Tale to this Day, as some of them do.

The Bishop speaking of this Occurrence in the first Volume of his Posthumous History, says, That, " the Earl of *Essex* appeared in " much Confusion, when he was brought be- " fore the Council; and fell under great De- " pression of Spirit, after he was committed " to the *Tower*. He had been before troubled " with Fits of the Spleen, which now re- " turned upon him with greater Violence. " He sent a Message by a Servant to his Wife; " telling her, *That what he was charged with,* " *was true: and he was sorry he had ruined* " *her, and her Children.* He ordered several " Things to be sent to him, and among the " rest, a Pen-knife, with which he used to " pare his Nails; but it not being brought, " he asked for a Razor, and said, that would " do as well. That Morning the King and " Duke came to the *Tower*, to see a new In- " vention concerning the Ordnance, as was " given out: And as they were going into " their Barge to return back, News was " brought that the Lord *Essex* was killed: " For his Man thinking he staid longer in his " Closet than Ordinary, looked through the " Key-Hole, and saw him lie dead; and " breaking open the Door, they found his " Throat was cut. At that Time, every " Body looked upon it as done by himself, " and the Coroner's Inquest found it to be " Self-Murder: His own Surgeon also assured " me, that it was impossible the Wound could " be as it was, if it had been given by any " Hand but his own."

In the same Volume of his Posthumous History, a little afterwards he says, " Suspicions " began now to be entertained, that the Earl " of *Essex* was murdered, from the Report " of a Boy and a Girl, that heard a Cry in " his Lodgings, that Morning he was found " dead; and that they saw a bloody Razor " thrown out of the Window, and a Wo- " man came out of the Lodgings, and took " it up: But as soon as the Earl of *Essex*'s " Lady heard of this Report, she made a " strict Enquiry about it, and sent what she " had collected to him (Dr. *Burnet*) who, " when he had perused all, *thought there was* " *no Colour to ground any Prosecution upon:* " Which the Lady would have encouraged, " with all possible Zeal, *if she had found any* " *Appearance of Truth in the Matter.* Besides, " (adds the Doctor) *The* Lord Essex *had a* " *Notion, that every Man was Master of his* " *own Life*; and seemed to approve what his " Wife's Great Grandfather, the Earl of " *Northumberland*, had done, who shot him- " self in the *Tower*, after he was arraigned."

To this Account of Dr. *Burnet*'s, I shall add a Paragraph of Mr. *Echard*'s History of *England*; who says, Since the Manner of the Earl's Death has been made a Question, I here subjoin an Extract of two Letters sent me, in the Months of *September* and *October*, 1719, from a Person of full Credit and Worth, who had the truest Honour and Respect for that Noble Lord: In these Letters the Writer says:

" I was then one of the Family of that " very worthy, but unhappy Earl of *Essex*, " who died in the *Tower*, by his own Hands. " He was really an excellent Person, but hap- " pened, by Lies and false Suggestions, to be ex- " asperated against the King, by a very ill de- " signing Man (the Earl of *Shaftesbury.*) There " were two or three Pamphlets published, e- " specially one large one, by *Speke* and *Brad-* " *don*, to prove that he was murdered in the " *Tower:* But I do believe, and I think I " am as sure as I can be of a Thing I did not " see, that the Earl in a sudden Transport of " Passion, was the Author of his own Death. " As soon as his Lady, the Countess, heard " there was a Report of his being murdered, " (for none of the Pamphlets were then pub- " lished) about four Days after his Death, " she sent me with Letters to the Earl of " *Clarendon*, who married the Earl of *Essex*'s " Sister, to Sir *Henry Capel*, afterwards Lord " *Capel*, the Earl's only Brother, and to " Doctor *Walter Needham*, their Physician, " and Friend; and desired, and impowered " us Four to take all the Care we could, and " to spare no Charge to enquire fully into " that Matter. Accordingly we Four met " at *Essex*-House in St. *James*'s Square, and " sent for the Coroner, and several of the " Jury: And I myself went to the *Tower* to " see the Room, and to consider how what " they said corresponded: And I must truly " say, That every one of us was fully satisfi- " ed, that it could be done by no body but him- " self: And so, I dare say, was the Countess " satisfied: And so was Doctor *Burnet*, tho' " he was the Person that gave the Countess " the first Notice of the Report of his being " murdered; which gave Beginning to the " Enquiry. We all four loved and honoured " him so entirely, that if we had found any " just Ground of thinking otherwise, we " should not have concealed it. I could say " Abundance more, if I had Time; and if " you should be at *London* in *November*, I " should be glad to see you. Be sure not to " to mistake the Time of his Death, as some " have done. The Earl was, by an Order " of Council, seized at *Cashiobury*, on *Mon-* " *day*, *July* the 9th, in the Afternoon. He " was brought to *White-hall* that Night, and " lodged in the Lord *Feversham*'s Lodgings. " On *Tuesday*, *July* the 10th, he was sent to " the *Tower*. On *Friday* Morning next, " *July* the 13th, he died about Eight a Clock, " just after the Lord *Russel* was carried out " to be tried. I assure you, the most solemnly " that can be, that what I say is true, ac- " cording to the best of my Judgment.

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I shall conclude these Remarks, with ob- serving the Disingenuity of the Authors of that History, which goes under the Name of *Rapin*, who were well acquainted with Mr. *Echard*'s History, and Bishop *Burnet*'s Posthumous History; and yet still suggest, that the Earl was murdered by the Direction of the King and Duke: They do not think fit indeed to recite, what these Authors say on the other Side; for had they given us the Words of Bishop *Burnet*, whom they call in other Parts of their History, *The most illustrious Writer*, subscribing to the Truth of whatever he advances; they durst not have

Rapin at Variance with Burnet.

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asſerted the direct contrary, to what he affirms here. Their greateſt Admirers muſt have retorted upon them.---With what Face can you reject the Authority of a Man, whoſe Opinion you have hitherto looked upon as ſacred; and to whoſe Labours you are indebted for the beſt Part of your Hiſtory of thoſe Times?

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The Trial of Sir SAMUEL BARNARDISTON, Baronet, for a *Miſdemeanor*, in the Court of *King's-Bench*, the 14th of *February*, 1683. 36 *Car.* II.

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Barnardiſton's *Trial.*

The Information.

AN Information was preferred againſt Sir *Samuel Barnardiſton* the Defendant, by the Attorney-General Sir *Robert Sawyer*; which recites, That, whereas there had been a horrid Conſpiracy, againſt the King and Government, of which ſeveral Perſons had been convicted, and afterwards executed for the ſame; particularly the Lord *Ruſſel* and Colonel *Sidney*; the Defendant, being a Perſon of a turbulent and unquiet Spirit, and maliciouſly intending to ſcandalize and vilify the Evidence, and diſturb the Government, cauſed ſeveral Letters to be written, in the firſt of which were the following Expreſſions.

His Letters made Evidence againſt him.

" The Return of the Duke of *Monmouth* " to *Whitehall*, and his being received into " Favour, has made a ſtrange Alteration at " Court: Thoſe who before ſpoke of him " very indecently, now court, cringe, and " creep to him. His Grace complained to " the King, of the ſcandalous Repreſentation " made of him in the *Monday's Gazette*; " upon which the *Gazetteer* was called to an " Account, who alledged for himſelf, that a " Perſon of great Quality ſent him in Writ- " ing, the Words related therein, command- " ing him to put them into the *Gazette*. Yeſ- " terday all the Priſoners that were in the " *Tower*, upon the late ſham Plot, were diſ- " charged upon Bail. Great Applications " are made to his Majeſty for pardoning Mr. " *Sidney*, which it is believed, will be at- " tained, and that he will be baniſhed. The " Lord *Howard* appears deſpicable in the " Eyes of all Men; he is under a Guard at " *Whitehall*; and, it is believed, will be " ſent to the *Tower*; for the Duke of *Mon-* " *mouth* will accuſe him, concerning the Te- " ſtimony he hath given, *&c.* The Papiſts " and High Tories are quite down in the " Mouth; their Pride is abated, themſelves " and their Plot confounded; but their Ma- " lice is not aſſwaged. It is generally ſaid, " the Earl of *Eſſex* was murdered: The brave " Lord *Ruſſel* is afreſh lamented. The Plot " is loſt here, except you in the Country can " find it out among the Addreſſers and Ab- " horrers.

In another Letter, he ſays, " I am now " thoroughly ſatisfied, that what was printed " in *Monday's Gazette, (relating to the Duke* " *of* Monmouth's *Confeſſion)* is utterly falſe, " and you will ſee it publickly declared ſo " ſhortly: The King is never pleaſed, but " when he is with him; hath commanded " all the Privy Council to wait on him, " and happy is he that hath moſt of his Fa- " vour: His Pardon was ſealed and delivered " him laſt *Wedneſday*. It is reported, he " will be made Captain General, and Lord " High Admiral: He treats all his old " Friends, that daily viſit him, with great " Civilities: They are all ſatisfied of his " Integrity; and, *if God ſpares his Life,* " *I doubt not, but he will be an Inſtrument of* " *much Good to the King and Kingdom:* He ſaid " publickly, he knew my Lord *Ruſſel* was " as loyal a Subject as any in *England*; and " that his Majeſty believed the ſame now. " It would make one laugh to ſee, how " ſtrangely our high Tories and Clergy are " mortified; their Countenances ſpeak it".

In a third Letter, he ſays, " The late " Change here is ſo great and ſtrange, that " we are like Men in a Dream, can hardly " believe what we ſee, and fear we are not " fit for ſo great a Mercy as the preſent " Juncture ſeems to promiſe: The ſham Pro- " teſtant Plot is quite loſt and confounded: " The Earl of *Macclesfield* is bringing Acti- " ons of *Scand. Mag.* againſt all the Grand " Jury that indicted him; and the Gentlemen " of *Cheſhire* and *Northamptonſhire*, who " were indicted, will bring their Actions".

His fourth Letter ſhews all his Hopes were blaſted, where he ſays, Contrary to all Men's " Expectations, a Warrant is ſigned at laſt, " for beheading Colonel *Sidney*, on *Tower-* " *Hill*, next *Friday:* Great Endeavours " have been uſed, to obtain his Pardon; but " the contrary Party have carried it, which " much daſhes our Hopes; but God ſtill go- " verns."

The firſt of theſe Letters was dated the twenty-ninth of *November*, 1683, and directed to Sir *Phillip Skippon* at *Ipſwich:* The ſecond Letter was dated the firſt of *December*, 83. and directed to the ſame: The third was dated 1ſt of *December*, and directed to Mr. *Edward Gael*, Linen-Draper at *Ipſwich*; and the fourth was dated the 4th of *December*, 1683, and directed to Mr. *William Cavell* at *Brightwell*, near *Ipſwich*.

The three firſt were proved to be Sir *Samuel*'s Hand, or written by his Direction, by his own Confeſſion before the Council, and the Evidence of *Oſland* his Servant: The fourth, *Oſland* depoſed, was tranſcribed from a Copy Sir *Samuel* gave him; and, it appeared, they were all ſent to the Poſt-Houſe by the Defendant's Direction.

The Defence.

Mr. *Williams* being of Counſel for Sir *Samuel*, ſaid in his Defence, That though it was proved, Sir *Samuel* did ſend theſe Letters to the Poſt-Houſe, he doubted, whether the writing a Letter to a private Friend, and putting it into the Poſt, could be deemed pub-

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liſhing a Libel within the Information: Beſides, he held there were ſeveral Things mentioned in the Information, by Way of Inducement, that were not proved; as that the Defendant, being of a turbulent Spirit, did it maliciouſly and ſeditiouſly, to diſturb the Peace.

The Chief Juſtice demanded, If he did it piouſly, with a good Intent? and obſerved, that if the Fact implied Malice and Sedition, the Law ſupplied the Proof. In Informations for Offences of this Nature, it is ſaid he did it falſely, maliciouſly, and ſeditiouſly, which are the formal Words; and, if the Nature of the Thing be ſuch, as neceſſarily imports Malice, Reproach, and Scandal, to the Government, there needed no Proof, but of the Fact done: If the Fact indeed were indifferent in itſelf, then, to make a Crime of it, the accidental Circumſtances muſt be proved; but they need not, where they imply Malice in their own Nature.

The Chief Juſtice's Directions to the Jury.

And the Chief Juſtice proceeding to ſum up the Evidence, ſaid, Sir *Samuel* might endeavour to cover his Practices, and gild them with a Pretence of Zeal for the true Proteſtant Religion, and call himſelf one of the *ſober Party*, or the *godly Party*; yet his Inſide was rotten: He was factious and ſeditious at Bottom, and full of Malice againſt the King and Government; againſt both Church and State, and every one that had not a Share in the late bloody Conſpiracy againſt his Majeſty: That in his Libels, he ſainted my Lord *Ruſſel* and Colonel *Sidney*, two of the Traitors that had been legally condemned and executed; and inſinuated, that the King was prevailed on by a ſham Plot, to deſtroy the Government, and every one of the *ſober Party*, as they called themſelves: Theſe Letters tell us, in the Language of that Traitor *Walcot*, *That God will be ſure to raiſe up Inſtruments*, by which was meant Inſtruments of Rebellion, Faction and Sedition, which they impiouſly called *God's own Work:* That this was the Language of thoſe Times, when they deſtroyed the beſt of Kings, and ſubverted the beſt of Governments: Nor did they only aim at the Deſtruction of the Civil Government, and thoſe in Authority; but of all thoſe who had been ſo dutiful to addreſs his Majeſty, and congratulate him on his Deliverance from the late Conſpiracy; by branding them with the Names of Abhorrers, Tories, Addreſſers, Sham-Plotters, and all the ignominous Names they could think on.

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That the Queſtion now to be tried, was, Whether the Defendant was guilty of writing theſe malicious factious Letters? which Sir *Samuel*'s Counſel had not offered to defend: And it muſt be admitted, they were as ſeditious and factious as could be written; and, in his Opinion, bordered on High Treaſon: He had not ſaid thus much, but it was a Matter of great Expectation and Conſequence; and he ſhould be ſorry to ſee us twice in one Age gulled by the ſelf-ſame Men, and the ſelf-ſame Way, into the ſame Treaſon and Rebellion; and all thoſe other Miſchiefs brought upon us in the late Times.

The Defendant convicted.

Then the Jury, without going out of Court gave their Verdict, That Sir *Samuel Barnardiſton* was GUILTY of the Miſdemeanor charged in the Information:

Fined 10,000 l.

For which he was ſentenc'd to pay a Fine of 10,000 Pound, and to give Security for his good Behaviour for Life.

Remarks.

We may diſcern by theſe Letters the Credulity of the Faction; how ready they are to believe every thing to be true, that is for the Advantage of their Party, upon the ſlendereſt Grounds; and with what Zeal they ſpread and propagate every Calumny, that may traduce the Government, and incite Tumults and Inſurrections when they are out of Play.

The Duke of *Monmouth* we find, notwithſtanding their ſanguine Hopes, was turned out of all his Places, and in a Manner baniſhed; and the reſt of the Facts aſſerted in thoſe Letters were equally falſe; probably forged by ſome of the Party.

The Trial between the EAST-INDIA COMPANY Plaintiffs, and THOMAS SANDYS Defendant, in the Court of *King's-Bench*, in the 35th and 36th Years of *Car.* II. 1683, and 1684.

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The East-India *Company and* Sandys.

The Declaration.

THIS is a Special Action on the Caſe, wherein the Plaintiffs declare, That His Majeſty King *Charles* II. by his Letters Patent dated the third of *April*, in the thirteenth of his Reign, reciting, That the Governor and Company of Merchants, trading to the *Eaſt-Indies*, had for a long Time been a Corporation, and enjoyed divers Liberties and Privileges, by Virtue of divers Letters, Patents, and Charters, granted them by Queen *Elizabeth* and King *James:* And that the King being informed that divers Diſorders and Inconveniences were then lately committed, to the great Prejudice of the ſaid Company, and Interruption of their Trade; whereupon they had humbly beſought his preſent Majeſty King *Charles* II. to confirm their ſaid Charter, with ſome Alterations and Additions, tending to the Advancement and Benefit of Trade: ----- The King had given and granted to them, That they ſhould be a perpetual Corporation, to have Succeſſion, Capacity, *&c.* And further granted, That they, and every one that ſhould be of the ſaid Company, and their Sons, at their ſeveral Ages of twenty-one; their Apprentices, Factors, and Servants; might freely traffick, and uſe the Trade of Merchandize by Sea, by ſuch Ways and Paſſages, then found out and diſcovered, as they ſhould think fit, to and from the *Eaſt-Indies*; and to from the Iſlands, Ports, Havens, Cities, Creeks, Towns, and Places of *Aſia*, *Africa*, or *America*, or any of them beyond the *Cape of good Hope*; as by

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by the ſaid Company, from Time to Time ſhould be limited and agreed, without Moleſtation, any Statute, Uſage, Diverſity of Religion or Faith, or any other Cauſe whatſoever notwithſtanding; ſo as the ſaid Trade be not carried on to any Country, Port, or Place, in the Poſſeſſion of ſome Chriſtian Prince or State, in Amity with his Majeſty.

That the ſaid Company ſhall have the whole, entire, and only Trade, to and from the *Eaſt-Indies*, and all Ports and Places aforeſaid:---That the ſaid *Eaſt-Indies*, Ports and Places aforeſaid, ſhall not be traded to, or frequented, by any other of his Majeſty's Subjects, who are prohibited to viſit the ſame, by Way of Merchandize, unleſs licenſed ſo to do, by the ſaid Company, on Pain of Forfeiture of their Ships and Goods, the one half of ſuch Forefeitures to the King, and the other to the Company: The Offenders to be impriſoned during the King's Pleaſure, and otherwiſe puniſhed for their Contempt; and not to be ſet at Liberty, till they have reſpectively entered into Bonds to the ſaid Company, of 1000 Pound each, not to Trade to the *Eaſt-Indies* for the future.------That the ſaid Company might grant Licences to any other Perſons to trade thither: And that the King would not, during the Continuance of the ſaid Letters Patent, give Licences to any Perſons to trade thither.

By Virtue of which Letters Patent, they alledged, They had been and were a Corporation; and have had eſtabliſhed and managed, and did ſtill manage, a great Trade of Merchandize to the ſaid *Eaſt-Indies*, with the Inhabitants there; who at the Time of the making the ſaid Letters Patent, or ſince, were not Chriſtians, or Subjects to any Chriſtian Prince or State; but are, and were Infidels and Enemies to the Chriſtian Faith: And that they had ſpent and laid out many and great Sums on this Occaſion.

And they further ſay, That the Trade aforeſaid cannot be managed or carried on, but by ſuch a Corporation; and that they ought to have and enjoy the ſole Trade thither, according to the ſaid Letters Patent.

But that the ſaid *Thomas Sandys*, being a Subject of the King's, and no Member of the ſaid Company, or Son, Apprentice, Factor, Servant, or Aſſignee of any of the ſaid Company, ſufficiently knowing the Premiſſes, and deſigning to prejudice the Company, contrary to the ſaid Letters Patent; and after making the ſame, and after the ſaid Company had ſettled their Trade, *viz.* the 19th of *January*, in the 34th Year of the King, did trade to the *Eaſt-Indies*, within the Ports and Places above ſpecified, particularly to *Atcheon*, *Mechlopotan*, and *Porta Nova*, with a certain Ship called the *Expectation*, without the Licence, and againſt the Will of the ſaid Company; to the Prejudice, Impoveriſhment, and manifeſt Grievance of the ſame, and againſt the Form and Effect of the ſaid Letters Patent, to the Plaintiffs' Damage 1000 *l.*

The Defendant's Plea. The Defendant hereupon prayed *Oyer* of the ſaid Letters Patent, which being ſet forth in *hæc Verba*, he pleaded the Statute of 18 *Edw.* III. *cap.* 3. which enacted, *That the Sea be open to all manner of Merchants, to paſs with their Merchandiſe where they pleaſed.*

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To this Plea the Plaintiffs demurred, and the Defendant joined in Demurrer: Mr. *Holt*, in his Argument for the Company, reduced the whole Diſpute to theſe two grand Queſtions: 1. Whether this Grant of the King to the Company, to have the ſole Trade to the *Eaſt-Indies*, excluſive of all the reſt of his Subjects, was a good Grant? 2. Admitting it to be a good Grant, whether it did veſt ſuch an Intereſt, Liberty, and Franchiſe in the ſaid Company, that an Action might be brought and maintained by them againſt any Perſon trading to the *Eaſt-Indies*, who was not qualified ſo to do by the ſaid Charter?

Demurrer.

Mr. Holt's *Argument for the King.*

And he held the Company's Charter to be good, 1. From the Conſideration of the Perſons to be traded withall; that they were Infidels, and not Chriſtians: 2. From the Conſideration of Foreign Trade itſelf; which might by Law be reſtrained by the King's Royal Power: And, 3. He conſidered the Circumſtances and Particulars of this Grant made to the Company.

1. As to the firſt he held, That by Law no Subject of *England* could trade with Infidels, without the King's Licence; or at leaſt the King might prohibit it; for the Law had adjudged them to be perpetual Enemies; for which he quoted the Lord *Coke*'s Words, 7 *Rep.* 17. 6. And no Man could trade with an Enemy without the King's Permiſſion: Beſides, it was lawful for the King to uſe his Royal Authority, to prevent his Subjects being perverted from the true Religion; which he could not do, unleſs he could prohibit their reſorting to Infidel Countries. And it was plain alſo from the Writ *Ne exeat Regnum*, that the King might prohibit any Perſon from going beyond Sea: That the Subjects of *England* had not ſuch a Right to a foreign Trade that it could not be controuled, becauſe the Liberty and Right to foreign Trade depended on Agreements and Contracts with foreign Princes, which depended on the Accidents of Peace and War; and the King had the ſole Power of making Peace and War: Beſides, the Rights of Trading were founded on the Treaties made between Princes, and the Articles of Commerce wholly in their Power; and no Subject could have Right to trade to any Country, but upon ſuch Terms as the King was pleaſed to ſettle with other Princes by Treaties of Commerce. He held further, that if a Trade became a Nuſance, and was rather hurtful than advantageous, the King, by Virtue of his Prerogative, was to defend the Nation, and protect his Subjects againſt thoſe Evils.

Then he proceeded to anſwer that Objection in the Defendant's Plea, That by the Statute of 18 *Edw.* III. c. 3. *The Sea ſhall be open to all Merchants to trade where they pleaſe.*

That this could not be taken ſo largely as the Defendant would have it; for then it would give a Liberty of trading with the

King's

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King's Enemies: But the true Meaning of that Statute was only this; That the Sea ſhould be open, without paying any extraordinary Duties or Cuſtoms for their Wool: Agreeable to that Clauſe in *Magna Charta*, *c.* 30. that all Merchants ſhould be allowed to trade, without unlawful Exactions: And further, that this Statute could not affect the *Eaſt-India* Trade; becauſe there was then no Trade in being, either with the *Indians*, or any other Infidel Nation.

That the Kings of *England* had, ſince that Statute, reſtrained foreign Trade by their Proclamations: And when the Commons petitioned they might have Liberty to trade, notwithſtanding any Proclamation, *Roll's Abr.* 214. they were not of Opinion, that the ſaid Statutes did extend to give Merchants Liberty to trade any where at their Pleaſure; if they had, they would have inſiſted on that Statute, and urged it to the King; and deſired that Law might be obſerved: But there they did tacitly acknowledge that the King had ſuch a Power.

Another Objection, he obſerved, was made againſt this Patent, that it created a Monopoly: But this he alledged, was not a Monopoly; for that was a Grant or Commiſſion from the King to any Perſons, Bodies politick, or corporate, for the ſole buying, ſelling, making, working, or uſing any Thing, whereby other Perſons were reſtrained of their Freedom or Liberty, that they had before, or hindered in their lawful Trade: Now here it could not be made out, that the Defendant ever had any ſuch Liberty before; or, that he was in Poſſeſſion of this Trade; and conſequently this Charter did not reſtrain him.

That in the 43d of *Elizabeth* a Parliament was ſitting; and at that very Time there was a Charter granted to this Company, of having the ſole Trade, excluſive of all others; and there had been another Charter of the like Tenor granted before in the 27th of *Eliz.* That in the Parliament of the 43d of *Eliz.* they fell vigorouſly upon Monopolies, and brought in a long Catalogue of them: But in all theſe Debates there was not one Word mentioned of the *Eaſt-India* Company's Charter; or indeed, of the Charters granted to any other Companies; as appeared by *Townſhend*'s Collection of the Proceedings of that Parliament, 244, 245. where might be ſeen the whole Catalogue of Monopolies, and all the Debates upon them.

That between the 43d of *Elizabeth* and the 21ſt of King *James*, the Legality of Monopolies was warmly debated in Parliament; and, at length, a Statute was made, in the 21ſt of King *James*, which ſeemed to ſettle and bound the Prerogative of the Crown, and the Right of the Subject; and this Statute condemns all Monopolies, and Commiſſions, for the ſole buying, *&c.* or uſing any Thing within the King's Dominions: But the Parliament were ſo far from condemning the Charter of this or any other Company, that there was an expreſs Proviſo, That it ſhould not extend to any Company, for the ordering or managing of Trade: That it appeared alſo, by the Preamble of the Statute 3 *Jac.* cap. 6. That the King had granted a Charter to divers Merchants to be a Company, and to have the ſole Trade to *Spain* and *Portugal*, excluſive of all others; and the Statute recites, the Miſchief of giving a Liberty to all the King's Subjects to trade thither: So far were they from condemning that Charter as unlawful; they ſeem to acknowledge, that nothing leſs than an Act of Parliament could give the Subject Liberty to trade contrary to that Charter: For their Words are, *Notwithſtanding the Charter had given the ſole Right of Trade to the Company, yet it ſhould be lawful for all People to trade thither.*

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Mr. *Holt* obſerved farther, That Practice and Uſage was a great Evidence of the Law; and it appeared, that many Charters had been granted to Perſons, to trade excluſively of all others: *Abraham Gilbert*, 26 *Eliz.* had the ſole Trade to *China*, granted to him and his Aſſociates, excluſive of all others: There was a Patent to Sir *Walter Raleigh*, 27 *Eliz.* to diſcover new Countries, inhabited by Heathens and Infidels: In the 23d of *Eliz.* There was a Patent to divers *Turky*-Merchants, to have the ſole Trade to *Turky*, excluſive of others: Another Patent, of the like Tenor, in the 34th of her Reign: And in the 27th, there were Letters Patents granted to certain Noblemen to trade to *Barbary*; and other Patents there were, for the ſole Trade to *Guinea*. And the Parliament had been ſo far of late from looking on the *Eaſt-India* Trade as a Monopoly, that in the 14th of this King, they had declared it to be for the Good of the Kingdom.

2. As to the ſecond Point, ſuppoſing this to be a good Grant, If any Perſon did trade to the Damage of the Company, it was a good Ground for an Action: For whenever the King grants a Franchiſe to one, and another Perſon violates the Franchiſe, the King's Patentee may have an Action of the Caſe againſt the Perſon that does violate the Franchiſe: And, as the Company had a Right, they had a Remedy againſt any that invaded it.

Sir George Treby's *Arguments for the Defendant.*

Sir *George Treby*, who argued on the other Side for the Defendant, laid down this for his Foundation, *That this Patent, as to reſtraining the Trade, and excluding all other Subjects, had the Nature of a Monopoly; and therefore was void in that Particular.*

For the Statute againſt Monopolies, 21 *Jac. cap.* 3. declares, That all Grants, any way tending to the erecting, ſtrengthening, furthering, or countenancing the ſole buying, ſelling, making, working, or uſing any Thing, whereby any Perſon is reſtrained of any Freedom, or Liberty, he had before, or hindered in his lawful Trade, are contrary to the Laws of the Realm, and utterly void.

If therefore this Trade to the *Eaſt-Indies* be a lawful Trade, then the Patent for reſtraining it, muſt be a Monopoly. The Nature of a Monopoly conſiſts in reſtraining a common Right: it appropriates to one or a few, what others had the lawful Uſe of before.

Generally

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Generally ſpeaking, Merchandiſe was always reckoned a lawful Trade. Every Man might uſe the Sea, and trade with other Nations, as freely as he might uſe the Air: And this Trade to the *Eaſt-Indies* was lawfully uſed before there was a Company, or elſe there never had been a Company.

He inſiſted chiefly on thoſe two Caſes in *Coke*, 11 *Rep.* The Caſe of the Taylor of *Ipſwich*, and *Darcy* and *Allen*'s Caſe, called the Caſe of Monopolies. It was the main Ground of both thoſe Caſes, that, at Common Law, no Man could be prohibited to exerciſe his Trade; for that was an Avoidance of Idleneſs: It helped to provide Suſtenance for a Man and his Family: It was of Service to the King; and the Conſequences of reſtraining Trade were pernicious; as the raiſing the Prices of Commodities, impoveriſhing of Men, and the bringing in bad Goods: And it was held in the Taylor's Caſe, That no Trade, or Merchandiſe, could be hindered by Patent: And a Charter to hinder a Trade at Sea, (as that a hundred Men ſhould have the ſole Trade, and the like,) was void.

It was truly ſaid by my Lord *Coke*, *Co. Mag. Cha.* 47 & 67. That all Monopolies concerning Trade and Traffick, were againſt the Common Law, and divers Statutes.

A Patent for the ſole printing of Law Books held void.

15 *Jac.* A Patent was granted, for the ſole printing of Law-Books: The Validity of which was queſtioned, in 1668, in *Chancery*, in a Cauſe between the Patentees and the Bookſellers, who had acquired Copies of Law-Books; and it was referred to all the Judges, before whom many ſpecious Reaſons were given to maintain it; as, that the Invention of Printing was new; that the printing Law concerned the State; and that they were printed in a particular Language and Character: But it was the Opinion of all the Judges, certified to the Lord Keeper, That thoſe Perſons who had acquired Copies ſince the Patent, could not be reſtrained from printing them.

Then he cited *Magna Charta*, 28 *Edw.* III. and ſeveral other Statutes, which declared, That all Merchants ſhould be at Liberty to trade by Sea: And he obſerved, that the Statute of 26 *H.* VIII. *cap.* 10. gave the King Power during his Life, to reſtrain the Trade to ſeveral foreign Countries; and repeated the Lord *Coke*'s Obſervation, that this King, who ſtood ſo much upon his Prerogative, would never have accepted this Power from the Parliament, if he had it before: That the 35 *Eliz. cap.* 7. enacts, That the Queen might by Proclamation prohibit the Exportation of Corn, which ſhe could not have done without ſuch an Act: And in anſwer to Mr. *Holt*'s Aſſertion, That no Subject can trade with Infidels without the King's Licence, he ſaid, there was no Law or Statute that prohibited it: That the Caſe of *Michelborn*, in 2 *Brownlow* 296, was but a very ſlender Authority to build upon. Had this been Law, Men would have been proſecuted for trading to *Turkey*, and *Barbary*, and ſeveral other Infidel Countries in *Aſia* and *Africa*; but there were never any ſuch Proſecutions: That it was only ſaid by the by in *Michelborn*'s Caſe, *That no Subject might trade with Infidels*; and was never ſolemnly adjudged; nor was it any where to be found in the Lord *Coke*'s own Books: And if the Lord *Coke* had ſeen a Licence to trade with Infidels, no Man beſides had ever ſeen one: And perhaps he was miſtaken; perhaps it was not authentick; and perhaps a ſufficient Anſwer to it might have been found in the Inſtrument itſelf, if it had appeared: However this was but one Precedent; and if the Law required ſuch Licences, there would have been more found among our Records.

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And as to the Danger of corrupting our Religion, or Manners, by opening a Trade with Infidels; this would be as much endangered by the Company's Servants reſorting to *India*, as by thoſe of any other private Trader's Servants, or Agents.

As to that Opinion of the Lord *Coke*'s, cited by Mr. *Holt*, That *Infidels were our perpetual Enemies*, it was not eaſy to underſtand what my Lord *Coke* meant by theſe Words. He thought he muſt mean a ſpiritual Diſcord, in reſpect to Religion, and not a temporal one between Nations; for then we could not be in Peace, or have any Treaty or Intercourſe with *Indians*, or other Infidel Nations, but muſt be in a conſtant and never-ceaſing State of War; eſpecially, if this was founded on a Divine Precept, as the Lord *Coke* inſinuates; for whatever Prerogative the King might have, he could not have a Prerogative to diſpenſe with the Canon of Scripture: And by the like Reaſon we ought not to trade with Infidels, there ought to be no foreign Trade at all; for there was no Nation where the Religion did not differ from that eſtabliſhed in *England*, in one Inſtance or other: That as to the Paſſage in *Grotius*, cited by Mr. *Holt*, it was only a Caution; for his whole Drift was, to demonſtrate, that Commerce and Leagues with Infidels were lawful; and he had written a whole Book, entitled, *Mare Liberum*, to manifeſt the Right and Lawfulneſs of Trade to the *Eaſt-Indies*, obſerving, that God in Nature appointed all People to reſort to and trade with others, inaſmuch as he had given ſeveral Commodities to ſome which others wanted: And Sir *George* obſerved, that this Notion, of having no Commerce with Infidels, was abſurd, monkiſh, phantaſtical, and fanatical.

The King, indeed, had a Right of making Peace and War: But it could not be ſuppoſed that his Majeſty, in his Treaties with the *Indian* Princes, ſhould ſtipulate, that one Part of his Subjects ſhould trade thither, and the reſt ſhould not: Or, that the King could be at Amity with them, as to one Part of his Subjects, namely, the Company, and be at Enmity with them, as to the other Part of his Subjects.

That the Statute of 12 *Hen.* VII. *cap.* 6. did not only recite, That the Merchant-Adventurers had Commerce with *Spain* and *Portugal*, and other Places in Amity with the King; but added, *That of Right they ought to have it:* Which ſhewed, that it was not by the King's Grant, or Licence: And, in like manner, the Defendant of Right ought to

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trade with the *Indians*, there being no War between the King and them.

He admitted, the King might reſtrain particular Perſons from going out of the Kingdom, by the Writ of *Ne exeat Regnum*: But that Writ was intended originally, to reſtrain the Clergy only. Of late, indeed, it had been extended to confine a Perſon to abide the Juſtice of a Court here: But it was always to reſtrain ſome particular Man from ſomething unlawful, and againſt the Duty of a Subject; and never to reſtrain one from doing a lawful Act, as Trade was.

As to the Charters ſaid to be granted by Queen *Elizabeth*, theſe were but Temporary and grounded upon ſome new Diſcovery of a Trade, or Paſſage; and this was the only good Foundation on which ſuch a Charter could be granted. When a new Invention, or Diſcovery, has been made, or was making by any Perſon, by his Skill, Charge, or, perhaps, with the Peril of his Life, the King, in that Caſe, may remunerate him with ſuch a Grant; but this muſt be only for a reaſonable Number of Years by the Common Law; and the Statute 21 *Jac.* concerning Monopolies, had limited that reaſonable Time to fourteen Years. The firſt Grant made in *England* to Perſons of the ſole Trade to the *Eaſt-Indies*, was upon a Suggeſtion of their being the firſt Traders thither; and that was but for fifteen Years, which was long ſince expired.

He cited the Statute of 18 *Eliz.* for eſtabliſhing the *Ruſſia* Company which recites their Charter made by the Crown; and that, notwithſtanding that Charter, others traded thither; and then enacts, that no other Perſons ſhould trade to *Ruſſia*: Which ſhewed the Judgment of the Parliament, that without ſuch an Act, the Reſtraint was not good.

The *Canary* Company had a like Charter; but in Treſpaſs brought, for ſeizing the Ship of one that traded to the *Canaries* without Licence, the Defendant juſtified by Virtue of that Charter; and Judgment was given for the Plaintiff againſt the Charter, by the uniform Opinion of the whole Court. *Mich.* 20 *Car.* II. *Rot* 403 *Banco Regis*, *Horn* and *Ivy*.

As to the ſecond Point he held, That the Charter could not give the Plaintiffs a Right to an Action againſt the Defendant; he could only be ſubject to a Penalty at the Suit of the King. In every Action on the Caſe, there muſt be *Damnum & Injuria*; there muſt be ſome Wrong done the Plaintiff: And it was no Wrong done the Plaintiffs here, that the Defendant had broke a Law which was diſpenſed with, as to them.

If the Defendant's trading without the King's Leave, was an Offence againſt the King, it was puniſhable by the King ſtill; and that way of Puniſhment muſt be followed, if there was to be any. The Charter on which the Plaintiffs founded their Action appointed the Penalty to be Forfeiture of the Ship and Cargo; but no Action of the Caſe was given: And, if this Trade had been prohibited by Act of Parliament, under Forfeiture of Ship and Goods, that muſt have been purſued: There could never have been an Action on the Caſe brought: In all Caſes of Statutes, By-Laws, and Charters, the Method of Puniſhment preſcribed muſt be obſerved.

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Mr. Solicitor's Argument for the Company.

Mr. Solicitor *Finch*, in his Argument for the Company, maintained, That the Crown had Power at common Law to grant ſuch a Charter. 1. Becauſe no Subject at Common Law had a Right to trade with Infidels, or go to Infidel Countries, without the King's Licence: And 2. Becauſe no Trade could be eſtabliſhed without precedent Treaties; and no ſuch Treaties could be made by Subjects, without Licence from the King to make them: For firſt, there was no Trade but what depended on the good Will and Pleaſure of the Foreign Prince, with whom it was propoſed to Trade, whether he would admit of it, or not; and 2. this might be reſtrained by a total Prohibition of Commerce with ſuch Prince, or Nation, by the King; and 3. The King might reſtrain any Man from going out of the Kingdom by a *Ne exeat Regnum*, without ſhewing any Cauſe. 4. If any Foreign Prince, on concluding a Treaty with the King, ſhould reſtrain the Trade to a certain Number of Perſons, or inſiſt on any particular Qualifications in the Management of it; he did not ſee how any Man could pretend to a Right to act contrary to that, in Breach of ſuch a League or Treaty made with the King by ſuch Foreign Prince: And as to the Statute of 21 *Jac. cap.* 3. it was made upon a particular Occaſion, and had not altered the Common Law in theſe Particulars; and, if ſo, the King had ſtill the Prerogative of laying ſome Reſtraints upon Trade, and of ſeeing it conducted to the Advantage of the Nation.

Mr. Pollexfen's Argument for the Defendant.

Mr. *Pollexfen* afterwards argued in Behalf of Mr. *Sandys*, the Defendant, wherein he admitted, that the King might reſtrain his Subjects on particular Occaſions, from going out of the Kingdom: And that he might alſo prohibit Commerce with any People in Time of War or Peſtilence; but ſaid, it did not follow from thence, that he might reſtrain all his Subjects, and at all Times, from trading, except ſome particular Men, or Companies. And having inſiſted on the like Authorities that Sir *George Treby* had done, he obſerved, That ingroſſing of any Goods or Merchandize, was penal by the Laws of this Nation; and whoever had the ſole Trade of buying and ſelling the Commodities of any particular Country, ingroſſed thoſe Commodities; and the Merchandizes that were to be vended, in ſuch Countries, were at his Will and Pleaſure, whereby he made what Prices he pleaſed, ordering and diſpoſing of them, both as to the Value, and every Thing elſe, as his own: And all monopolizing of Trade, in this Manner, was ingroſſing, by the Aſſiſtance of Letters Patent, which created ſuch Monopolies. The granting this Company the ſole Trade to the *Eaſt-Indies*, inveſted them in all the Merchandiſe of thoſe Countries: And, if ingroſſing by the Common Law was unlawful, all Letters Patent, to authoriſe Men to ingroſs, were void. And as it had been admitted on the other Side, that, if this was a Monopoly, it was unlawful, he would take upon him to ſhew, that it agreed exactly with my Lord *Coke*'s Deſcription of a Monopoly: And firſt he obſerved, that by their Patent the ſole Trade was granted them; that is, the ſole buy-

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ing and ſelling; and accordingly they actually had the ſole buying and ſelling of all *Eaſt-India* Commodities, if their Charter was good. 2. They were within that other Part of the Deſcription, that otherPerſons were hindered and reſtrained from a Freedom, or Liberty they had before, in their lawful Trade; for they were authoriſed, by this Patent, to ſeize the Ships and Goods of thoſe that traded thither. 3. All the Evils and Miſchiefs that attended Monopolies, were the Conſequences of this Patent: 1. The Prices of Goods were raiſed and enhanſed. 2. It was calculated for the private Gain of a few, to the Prejudice of the reſt of the King's Subjects. A Grant of the ſole Trade to one ſet of People, to this or that Part of the World, was deſtructive to other Merchants, and People: All Shipping, and Maſters that go ſuch Voyages, muſt alſo ſubmit to their Prices, and ſuch Terms as theſe Monopolizers pleaſed to impoſe; as muſt all Mariners, Artificers, Factors, and others, that depend upon ſuch Foreign Trades, which might be of very ill Conſequence to the Kingdom. Great Oppreſſions might be, and actually were, exerciſed by ſuch Companies, on thoſe who were within their Service or Power: And, if the Evils and Miſchiefs which the Common Law forbad, and endeavoured to prevent, by adjudging all Monopolies, Ingroſſings, and ſole Trade, unlawful, were great, the Evils and Miſchiefs, attending this Patent, were greater than any other Monopoly; becauſe their Trade was the greateſt that ever *England* knew.

It was held, That every Grant of the King had a Condition annexed to it, namely, that it ſhould not be to the Charge or Prejudice of the King's Subjects; for if it were, it was a void Grant; and therefore the King is ſuppoſed to be deceived in ſuch Grants.

It had, indeed, been ſaid by the Defendants, That this was not a Patent granted for the Advantage of a few, or for raiſing the Prices, or monopolizing Commodities; but for good Government and Order, and the Preſervation of this Trade, which otherwiſe would be deſtroyed: And there were the like Grants heretofore, to *Turky*, *Barbary*, and other Places: But it was obſervable, what our Law-Books ſaid concerning ſuch Grants and Monopolies; particularly 2 *Inſt.* 540. That new Corporations, trading to Foreign Parts, or at Home, though under the fair Pretence of Order and Government, yet, in Concluſion, tended to the Hindrance of Trade and Traffick; and in the End produced Monopolies: And he inſiſted, that there never was one judicial Opinion againſt Perſons trading ſeparately within the Limits granted to any trading Company, though there muſt have been a Multitude of Inſtances of private Perſons trading within ſuch Limits.

He did admit, that the Grants to the *Turky*, *Barbary*, and *Ruſſia* Companies, were like this, of ſole Trade; but yet they had never attempted to reſtrain others in the Manner the *Eaſt-India* Company had done: Theſe Companies never inſiſted on a ſole Trade, though they had ſuch Words in their reſpective Patents; but had uſed their Trade in a more commendable and legal Way; and thereupon obſerved the Difference between the Way of trading of thoſe Companies, and the Trade of the *Eaſt-India* Company. 1683-4. 36 Car. II.

That the Companies of *Turky*, *Barbary*, *Ruſſia*, and *Hamburgh*, nor any other, till of late Years, ever traded with a Joint-Stock; but the Members of the ſaid Companies, every Man uſed his own Trade; bought and ſold his own Commodity; uſed and employed his own Factors and Servants; and the Company took Care to ſend out a Conſul, or ſome other Agent, to preſerve the Trade; and by ſmall Impoſts upon the Commodities traded for, provided for ſuch Officers; which Impoſts, and Aſſeſſments, were made by By-Laws among themſelves: They only ordered what Ships ſhould go; but left it to every particular Member of the Company, to ſend what Goods he would upon his own Account; to appoint who he would for his Factor; and to bring over what Commodities he pleaſed: They did not trade upon a Joint-Stock, or the Stock of the Body politick. If you dealt with any of them, you knew the particular Perſon you dealt with; and no Man was refuſed to be of the Company, who would pay a ſmall Sum for his Freedom: And whoever was of the Company, had a Vote in ordering the Affairs of the Company: But on the other Hand, the *Eaſt-India* Company ingroſſed the whole Trade: They had a Joint-Stock; and every Man, whether a Merchant or not, who could buy a Share in their Stock, was of their Company: The Committee managed; and the reſt were forced to ſubmit to their Pleaſure in the Diſtribution: Thoſe few that had the greateſt Shares, had the Diſpoſal of the whole Stock: No Member traded, bought, or ſold, or had any Thing he could call his own, but ſuch a Share in the Stock: They did not ſuffer the Members to trade with their own Money, at their own Diſcretion, or to employ whom they pleaſed; and no Man could have a Vote amongſt them, that had not 500 *l.* Stock: Nor no Man could have ſuch a Share, unleſs he gave 14 *l.* or 15 *l.* two and a half *per Cent.* or ſome great Sum for it: So that by their Conſtitution they could have no more Perſons in their Company than they had 500 *l.* Shares; and theſe Shares being ingroſſed into a few Hands, they had All, and called themſelves the Company: So that a Man that would not be deceived by Words, but diſtinguiſh Things different from one another, muſt diſtinguiſh between one Company and another; which of them were Ingroſſers and Monopolizers, and which not.

The *Turky* Company, and thoſe like it, might be truly ſaid to be Managers, Regulators, and Improvers of Trade: They had no Joint Stock to trade upon: They did not engroſs: They admitted every Man to be free of the Company that would; to trade with his own Money, on his own Credit; to buy and ſell his own, and to employ whom he pleaſed: And none of them, under Pretence of Government, or the Preſervation of Trade, made unreaſonable Advantages.------While this inviſible *Eaſt-India* Merchant, the Body politick, covered and countenanced ſome few Men

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Men amongſt them, to ingroſs, buy, and ſell, at their own Rates; and exclude all others, to the great and exceſſive Advantage of a few.

In the *Turky* Company, where they traded as diſtinct Members, every Man knew his Creditor and his Debtor, becauſe they dealt in their natural Capacities: But this Company trading in the Capacity of a Body Politick, no Man that dealt with them knew his Creditor or Debtor; and it was a great Miſchief, when Perſons knew not how to ſue or deal with them: Take them apart indeed, they were as juſt and as good a People to deal with as could be; but take them together as a Body, what was ſo hard to deal with as a Corporation? They had ſeen Inſtances of theſe Things in this very Company: Within a few Days they had ſuch an exorbitant Power, that no Man could contend with them; and in a few Days they became ſo inviſible, as well as low, that no Dun could find them: Bodies Politick, in Judgment of Law, had neither Soul or Conſcience; and they generally dealt with the reſt of Mankind, as if the ſeveral Members in their natural Capacities had neither Souls or Conſciences.

Then Mr. *Pollexfen* proceeded to conſider that Objection, That this was an Infidel Country; and the Subject had no Right to trade with Infidels, without the King's Licence. To prove which, they had cited *Michelborn*'s Caſe, in 2 *Brownl.* 296; wherein Mr. *Brownlow*, the Prothonotary, recites, what my Lord *Coke* ſaid in that Caſe, "*That* "*no Subject might trade to Infidel Countries*, "*without the King's Licence*; and his Reaſon "was, becauſe he might relinquiſh the Ca- "tholick Faith, and adhere to Infideliſm: "And that he had ſeen a Licence in the "Time of *Edward* III. wherein the King "recited the Confidence that he had in his "Subject, that he would not decline his Re- "ligion, and licenſed him; and that this did "ariſe upon the Recital of a Licence, made "to trade to the *Eaſt-Indies*."

That they had alſo cited *Calvin*'s Caſe, in *Co.* 7 *Rep. Fol.* 17; wherein it is ſaid, "*That* "*Infidels were in Law, perpetui inimici:* Be- "tween them and Chriſtians, there was per- "petual Hoſtility; there could be no Peace: "And 12 *H.* VIII. *Fol.* 4. where it was holden, "That a *Pagan* could not have or maintain "any Action at all, or have any Thing "within the Realm; and to prove this cited "the Regiſter, 282, & 12 *H.* VIII. *Fol.* 4."

He anſwered, Suppoſing the Law to be according to theſe Books, and as the other Side would have it; the Conſequence would be, that the Plaintiffs could not maintain their Action; but the Charter granted to them would be void: For if the Books cited were of any Authority, the Reaſons given in them muſt be of Authority; and *Brownlow* ſaid, the King had the Care and Preſervation of Religion, by the Law veſted, and repoſed in him; that the Subject ſhould not trade with Infidels, that they ſhould not renounce their Faith: And the King would give Licence only to ſuch Men to traffick, as he had that Confidence in, that they would never waver from the Religion they profeſſed.

But ſuppoſing this to be true, the Patent muſt be naught; for then it would only have been grantable to Perſons in whom he had ſuch Confidence: But here the Power of trading with Infidels, is granted to Perſons indefinitely; for the Members of this Company were perpetually changing; ſome ſold their Stocks, ſome died, and others came in as Executors: Many new Members there were every Year; nor was it ſo much as examined or enquired into, whether they were fixed in their Religion or not? And what Confidence then could there be in this Body politick, which the Law looked upon as having neither Soul nor Conſcience? What Confidence could be repoſed in ſuch a Perſon, as to Religion?

2. It was not only the Members of the Company, that at the Time of the Incorporation were incorporated, and their Succeſſors, that were thus priviledged; but their Sons, Apprentices, Factors, and Servants, had Licence to trade there, by this Patent: And what Security could there be, that ſuch might not, by converſing with Infidels, change or prejudice their Religion? Such a Patent could not be granted to a Body politick, and their Succeſſors, which might have Continuance for ever; and to their Sons, Factors, Apprentices, and Servants, Perſons yet unborn, and not *in rerum natura*, when theſe Patents were made. And admitting the King could give Licence to the *Eaſt-India* Company to trade with Infidels, he could not give them a Power to grant Licences to others, as this Patent did, to their Sons, Servants, and all that they ſhould nominate at their Diſcretions.

Could the King thus grant from himſelf his Kingly Care, and the Truſt in him repoſed, for the Care of Religion, to them, to manage as they would; and ſtipulate that he would not uſe it himſelf without their Conſent? This muſt certainly make it a void Grant.

And conſidering the Authorities, on which this Point was founded; he obſerved, That this Book of *Brownlow*'s was printed during the Uſurpation, and was not licenſed by any Judge: And he had, he ſaid, got an Abſtract of the Roll of the Caſe there reported; and it was this *Mich.* 7 *Jac. B. C. Rot.* 3107. *Michelborn* againſt *Bathurſt:* In a Prohibition, ſetting forth, That the King had granted to the Plaintiff his Commiſſion, to go with the Ship *Tyger* to the *Indies*, *To ſpoil and ſuppreſs the Infidels, and to take from them what he could*; and the Plaintiff in the Prohibition having this Commiſſion from the King, did enter into Articles with the Defendant, to give him a Share of what he ſhould get in the Adventure; and thereupon there was a Suit in the Admiralty by the Defendant againſt the Plaintiff; and he moved for a Prohibition, ſuggeſting, That the Articles were made upon the Land, and not upon the High Sea, and ſo the Court had no Juriſdiction. Upon the Debate of this Caſe, it did appear, there were a Kind of Letters of Mart, a Commiſſion from the King, in a warlike Manner to ſpoil the Infidels, and get what he could from them: But how this would effect the Buſineſs of Trade,

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Trade, he did not know. As to what was in *Brownlow*, it was only an occaſional Saying of the Lord *Coke*'s, upon the Motion for a Prohibition, and did not relate to the Matter brought in Judgment.

As to that Caſe in *Calvin* of the *Poſt-nati*; where it is ſaid, That an Infidel is *perpetuus inimicus*, can maintain no Action, or have any Property in anyThing; and that there is, or ought to be, perpetual Hoſtilities between Chriſtians and them; no Peace could be made with them.

Theſe too were but occaſional Sayings, and made nothing to the Matter inQueſtion, about the *Poſt-nati:* There was nothing there in Judgment that gave Occaſion for them: It did appear indeed, That in a Writ of Protection, granted to the Prior and Brethren of the Hoſpital of St. *John of Jeruſalem*, that that Hoſpital was founded for the Defence of Holy Church, againſt the Enemies of *Chriſt* and Chriſtians; but it could not be concluded from thence, that Infidels ſhould not have any Property inTrade, and be perpetual Enemies, with whom no Peace could be had: And as to the Caſe cited 12 *H.* VIII. 4. This was an Action of Treſpaſs, for beating a Man's Servant, and taking away his Dog, called a Blood-Hound; and in arguing this Caſe, it was ſaid occaſionally, That if a Lord beat his Villain, or an Husband his Wife, or if a Man beat a Pagan, an Outlaw, or a Traitor; theſe Perſons reſpectively could have no Action, becauſe they were diſabled to ſue: But this was no more than Diſcourſe, ſudden Thoughts and Opinions, and Sayings of Counſel; no ſolemn Debates or Judgment in the Caſe.

It was true, the Chriſtian Religion and Paganiſm were contrary to each other: But, becauſe theſe Religions could not be reconciled, did it therefore follow we ſhould have noCommerce with them? This was a moſt irreligious Doctrine; and deſtroyed all Means of convincing or converting them.

One would think, If the General Practice of Trade and Commerce, and legal Proceedings in all Ages, had been conſidered: my Lord *Coke* could not be in earneſt, in what he ſaid in *Calvin*'s Caſe about Infidels; for we had had Commerce with the *Turks*, *Perſians*, and *Moors* of *Barbary*, as well as with thoſe of *Spain* and *Portugal*, who were Infidels, till theYear 1474: And we had made Leagues with ſeveral Infidel Princes, ſent Ambaſſadors and Miniſters to them, and received Ambaſſadors from them, even in that religious Reign of Queen *Elizabeth*, and ſome hundred of Years before.

But had they been perpetual Enemies, we might have juſtified killing them; and the taking away all they had, as was adjudged 17 *Edw.* IV. *Fo.* 13; & 14, and 2 *H.* VII. 15.

It had been objected. That the *Jews* were actually dealt with in this Manner: As they were Infidels and perpetual Enemies, ourKings taxed them, and took away their Eſtates at Pleaſure: To which he anſwered, OurKings uſed them but as Spunges, ſuffering them to gripe what they could from others, that they might ſqueeze it from them, into their own Treaſuries: And it did not follow from thence, that they were to be uſed as alien Enemies, and could have no Property: They were indeed under a Curſe, a vagrant People, without Head, Prince, Governor, or Country; and there was noDifficulty in taxing or taking from them at Pleaſure, being hated of the People wherever they lived: But had they been as alien Enemies amongſt us, they could neither have made Bargains or Contracts, or been capable of Property; but the Subject as well as the Prince might at Pleaſure fall upon them, and take what they had to their own Uſe, as from an Enemy.

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But by what had been admitted, That they were great Uſurers, and had great Eſtates; it was evident, they were treated as *alien Amies*, (Friends): How could they elſe have been Uſurers, and got Eſtates, if they could make no Contracts? How could they have preſerved their Perſons and Eſtates againſt the King's Subjects, unleſs they had had the King's Protection, and been treated as alien Friends? How could ſuch Multitudes have remained amongſt us, as it appears there were here in the Reign of *Edward* I. when the Statute *de Judaiſmo* was made, *That no* Jew *ſhould take Uſury upon Lands, Rents, or other Things*; upon the making whereof, my Lord *Coke*, in his Comment on that Statute, ſays, That 15,000 *Jews* and upwards, thereupon went out of the Realm: And of late Years, and at preſent, how many of them were there that lived amongſt us, drove great Trades, and had conſiderable Eſtates?

And ſhould it now be adjudged, that any Man at Pleaſure might take away their Eſtates, and they could have no Remedy or Action for their Debts owing them; but inſtead thereof, might be beaten or impriſoned, as Enemies to the King; we ſhould probably ſoon ſee, what the Succeſs of ſuch a Judgment would be.

It is none of the moſt inconſiderable Doctrines our Religion teaches us, That we ſhould ſpeak and act plainly and uprightly one with another: But Religion is too often made a Cloak for other Purpoſes; he hoped it would not be ſo in this Caſe. He obſerved further, That the Statutes that had been cited, *Magna Charta*, 9 *Edw.* III. 25 *Edw.* III. 2 & 11 *Rich.* II. all enacted the Freedom of Trade in generalWords, excepting only ſuch as were at War with the King: In none of them was there any Exception of Trade with Infidels, and the Practice had been accordingly: We had traded with all Infidel Countries, with which we were acquainted; and treated the People of thoſe Nations as *alien Amies*, (Friends) when we were not in an actualWar with them. And thoſe Sayings on which the contrary Opinion is founded, were probably taken out of ſome zealous Catholick Authors, in ſuperſtitious Times; not being at all conſonant to the Rules of Law, or true Religion.

The Statute of Monopolies was general; and he hoped it would not be avoided, upon any imaginary Difference in Law, between Infidel and Chriſtian Countries, to monopolize the Trade of the greater Part of the

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World thereby; *viz.* That of *Turky*, *Perſia*, *Barbary*, and the *Eaſt* and *Weſt-Indies*.

If Licences to trade to theſe Places were neceſſary, it would be worth Conſideration, Whether that would not introduce the impoſing of Rates without a Parliament? For ſuppoſing it true, That there had been Licence to go to trade in Infidel Countries; ſo there had been Licences to go beyond Sea, and to carry on other Trades beſides this: But it did not follow from thence, That it was unlawful to trade without Licences; much leſs did it follow, that ſuch a Patent as this to any one, or to a few Men, to have the ſole Trade to any Place and the Power of Licenſing others, could be warranted by it.

The King, no Doubt, might reſtrain the Paſſage of Merchants and Merchandize, in ſome Caſes, and lay an Embargo on Ships; but this muſt be done upon ſpecial Reaſons.

As, firſt, In Caſe of War. 2. He might reſtrain the Exportation of ſuch Merchandizes, as were neceſſary for the Defence of the Kingdom. 3. In Caſe of a Plague, he might prohibit Commerce with any infected Country; but then theſe Prohibitions were general to all his Subjects alike, and the particular Reaſons and Grounds of them apparent: But if under any Pretence, any ſole Trade to ſome one Perſon, Body politick, or natural, be granted, excluding all others; ſuch a Grant, was in Deceit of the King, and to the Prejudice of his Subjects; and therefore void.

As to the ſecond Point, They could not have an Action on the Caſe, provided their Patent had been good: If they would take Advantage of the Grant, they muſt take it as the Grant gives it; and proceed for the Forfeiture of Ship and Goods: As for an Action of the Caſe, their Charter did not give it; and, if an Act of Parliament had been penned in this Manner, ſuch an Action could not have lain.

And upon the whole concluded: 1. That what the Company claimed by their Patent, *(viz.)* To have the ſole Trade to the *Eaſt-Indies*, in their politick Capacity, excluding all others, was a Monopoly and Ingroſſing, againſt the common Law and the antient Statutes, and the Statute of Monopolies, 21 *Jac.* and therefore they had no Right to what they claimed.

2. That what the Defendant had done, he had done lawfully, and therefore was not to be puniſhed: And

3. Though the Company had a lawful Claim to this Trade by their Patent, and the Defendant had done what he ought not, yet they could not maintain this Action; and therefore prayed Judgment for the Defendant.

The Chief Juſtice's Obſervations.

The Chief Juſtice *Jeffries*, upon hearing the Arguments thus far, obſerved, That it was a Caſe of great Importance, and had been very well argued on both Sides: But he did not think there was any material Difference, between this and the Charters granted to the *Turky* Company, and others: But there was another Thing, which, he thought, deſerved great Conſideration, it being a Queſtion wherein Trade was mightily concerned: We had a potent Neighbour, that had both Experience and Induſtry, and was our Rival in this Trade: He wiſhed, We had as much Induſtry, and were as diligent as they: They had found by long Experience, that a Joint-Stock was the only Way to carry on their Trade; (he meant *Holland*). And it was very well known, if it had not been for a Joint-Stock, the Trade had never been ſo beneficial as it was; it was owing to this, that their Trade was become ſo great and deſirable: And now, that by the Joint-Stock, and Induſtry, and Experience of the Company, the Thing was become facile and valuable; that particular Perſons ſhould come and ſweep away the Advantage of it, ought to be conſidered. Mr. *Sandys* and his Partners were zealous now to reap the Fruits of the Company's Labours: But would he be contented to pay his Proportion of all the Charge theſe People had been at, to advance the Trade to the Condition it was in?

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There was another Conſideration of great Moment: Peace and War was no Doubt in the Power of that Prince and People with whom this Trade was carried on: And ſuppoſe an Injury ſhould be committed by any particular Perſons in the Infidels Country, and the Ship ſuch Perſons belonged to, ſhould get away without making any Reparation for it; Would not the Company's Stock and Factors, as they were of the ſame Nation, be in danger of ſuffering by it? And might not ſuch Outrages occaſion a War, and exclude all the Subjects of this Nation from that Trade? As the Company therefore were liable to make Satisfaction for ſuch Injuries, it ſeemed fit they ſhould have the Management of the Trade.

Judgment for the Plaintiff.

This Cauſe having been argued ſeveral Terms, Judgment was given for the Plaintiff, in which all the Judges of the *King's-Bench* were unanimous, and gave their Reaſons for it. Mr. Juſtice *Holloway* obſerved, That a Foreign Trade, with ſeveral Chriſtian Nations, had been opened by Act of Parliament; but held that at Common Law, this was an inherent Prerogative in the Crown; and none could trade with Foreigners without the King's Licence: That *Michelborne*'s Caſe, cited by thoſe that argued for the Company, had not been anſwered: That this Trade could not be carried on but by a Company, which none could erect but the King: And that the Parliament were ſo far from looking on it as a Monopoly, that it was declared to be advantageous to the Publick, by the Statute of 14 *Car.* II. *cap.* 24. which was made that the Company might not be diſcouraged in carrying on their Trade: That the 29 *Car.* II. took Notice of them, and aſſeſſed their Stock, at twenty Shillings for every hundred Pounds; nor had it ever been queſtioned as a Monopoly by Parliament: That the Prerogative of making Leagues and Treaties with foreign Nations, was in the King alone; and conſequently the Terms and Conditions of Trade: That the Statute of *Edw.* III. did not affect this Trade, for there was then no ſuch Trade in Being; but taken in the largeſt, it only extended to the Tranſportation of Wool: That the Company had been in Poſſeſſion of this Trade an hundred Years, which gave them a Right, if they had none before.

The Judges Reaſons.

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Mr. Juſtice *Walcot*, and Mr. Juſtice *Wythens*, gave much the ſame Reaſons, concluding alſo for the Plaintiff. The Lord Chief Juſtice *Jeffries* went through the Caſe, and ſummed up what had been offered by the Counſel on both Sides: And he ſeemed to admit that the Clauſe in the Charter, for the Forfeiture of the Ship and Cargo, was illegal: But he held, that Commerce was founded on the Law of Nations, and not on the Common Law; and that the King only had the Prerogative of ſettling the Terms of it with other Powers: That the King only could do Juſtice to his Subjects, and grant Letters of Mart or Repriſal, where they were injured in their Trade: That all the Staples and Marts for the Trade of his Subjects, whether in *England* or out of *England*, were erected by the Crown: That the King ſhut and opened foreign Trade at Pleaſure.

That the *Hanſe* Towns were ſome of the firſt Corporations of Trade, mentioned in our Hiſtories; and it was thought the Intereſt of *England* to ſupport and encourage them: King *Henry* III. gave them great Privileges, and the *Still-yards* for their Reſidence, which they enjoyed near 300 Years.

That the firſt Patent for erecting the Staple, was obtained in the Reign of *Edward* III. They were called, *The Brotherhood of St.* Thomas *of* Becket; and their Charter confirmed by many ſucceeding Kings, till the Reign of *Hen.* VII. who gave them the Name of *Merchant-Adventurers*; and they were afterwards confirmed by *Hen.* VIII. *Edw.* VI. Q. *Mary*, and Q. *Eliz.* the laſt of whom inlarged the Privileges of this Company; confirmed the Charter to the *Muſcovy* Company, granted by *Philip* and *Mary*; and erected ſeveral other Trading Companies: And in the third Year of King *James* I. that Act was made for opening a general Trade to *Spain*, *Portugal*, and *France*, to all his Majeſty's Subjects, but left all other Charters of Foreign Trade to remain as they were before.

That it appeared, the Law of the Land, and the Law of Nature and Nations, gave the Power of erecting Companies, for the Management of Traffick, to the Prince, excluſive of all others; and this was to be reckoned among the *Jura Regalia:* No Act of Parliament had reſtrained this Prerogative, but in ſome particular Places: That the *Eaſt-India* Company had ſolely run the Hazard, and been at the Expence of eſtabliſhing this Trade; made Diſcoveries, erected Forts, kept Forces, ſettled Factories, and entred into Leagues with the *Indian* Princes, for the due Regulation of it; and, it would be againſt natural Juſtice and Equity for others to reap the Advantage; eſpecially ſince they had done all this by the Authority of the Crown, under which they claimed: And had the Matter been at firſt doubtful, as it was not; yet, after ſo many Years undiſputed and uninterrupted Prerogative of the King's, and the Poſſeſſion of the Company purſuant thereto, it muſt be looked upon as a good Grant by Law.

As to the ſecond Point, he was of Opinion, That the Defendant trading to the *Indies*, contrary to this Charter, might be puniſhed by an Information at the Suit of the King; and that this Action by the Plaintiff was alſo well brought, and the Plaintiff need not alledge ſpecial Damage, any more than the Grantee of a Fair or Market, or any other Franchiſe; and, upon the whole declared, he was of the ſame Opinion with his Brethren, That Judgment be given for the Plaintiff.

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Notwithſtanding this Judgment, it ſeemed to be the prevailing Opinion after the Revolution, That Charters, granting the ſole Trade to Foreign Countries, excluſive of the reſt of his Majeſty's Subjects, were not legal; and the Old *Eaſt-India* Company, thereupon, applied themſelves to the Parliament, to have their Trade eſtabliſhed by a Statute; which the Parliament were ready to comply with, on Condition of their advancing a Sum of Money, for the Support of a War againſt *France:* But another Set of Merchants outbidding them, and offering to advance two Millions, it was agreed to demoliſh the Old Company, and erect a new one: However, the Old Company ſubſcribing large Sums towards the New one, and ſo gaining a conſiderable Intereſt in it, and being poſſeſſed of all the *Engliſh* Forts and Factories in *India*, the two Companies thought fit, at length, to unite; and were eſtabliſhed by Act of Parliament, as they remain at this Day.

Remarks on the Trial the Eaſt-India *Company and* Sandys.

But, if the monopolizing any Branch of Trade be prejudicial to the Kingdom, it certainly is not leſs ſo, for having the Sanction of a Statute to countenance it; and, I think, it is agreed, that all ſuch excluſive Acts and Charters, are very detrimental to Trade.

It was, indeed, neceſſary, at firſt, to fit out ſtrong Fleets, and to erect Forts in the *Eaſt-Indies*, for the Protection of our Trade; not againſt the inoffenſive *Indians*, but againſt the *Dutch*; who, in a hoſtile Manner, drove both the *Engliſh*, and the Natives themſelves from the Iſlands where the fine Spices grow, and monopolized that Trade, while we were unhappily engaged in a Contention with King *James* and King *Charles* I. about their Prerogatives. King *James* was ſo diſtreſſed for want of Money, that he was forced to deliver up the Cautionary Towns to the *Dutch*, which rendered them dependant on *England:* 'Till they obtained theſe, they durſt not openly invade our Settlements in the *Oriental* Iſlands: But they no ſooner had theſe Towns reſtored, and ſaw the Parliament contending with King *James*, about his Prerogatives, but they ſeized all our Settlements in the Spice Iſlands, tortured and murdered our Merchants and Factors there, and deſtroyed their Ships, and plundered them of their Goods; for which they have never made us Satisfaction ſince. King *James*, indeed, preſented Memorial after Memorial on this Head: But as they knew he abhorred War, and that his Parliament would never grant him a Penny of Money to go to War with them, though he had had an Inclination that Way, they went on with their Depredations, till they had entirely expelled us from the Spice Iſlands.

King *Charles* I. had ſet his Heart on procuring the Nation Satisfaction from theſe High

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High and Mighty Monopolizers; and when the Parliament refuſed him Money to enable him to call the *Dutch* to an Account, and maintain the Sovereignty of the Seas, he raiſed Money by Ship-Writs for that End; a Way that had been made uſe of antiently to equip out a Fleet. But the *Dutch*, jealous they ſhould be driven from the Herring-Fiſhery on our Coaſts, and be obliged to reſtore us the Spice-Trade, the two Grand Supports of their State, joined with the *French*, and with their Brethren the *Engliſh* Fanaticks and Republicans, and raiſed ſuch a Rebellion againſt him, that they deſtroyed this Prince, and Monarchy with him, for a Time.

The Uſurpers afterwards made the ſame Demands on the *Dutch*, that King *James* and King *Charles* had done; and beat them in ſo many Sea-Engagements, that they were glad to beg Peace, and promiſe Reſtitution of what they had robbed the Nation of: But *Cromwell*, on account of their Guaranteeing his Uſurpation, was content to diſpenſe with this Article of the Peace, and let them remain in poſſeſſion of the Spice Iſlands. King *Charles* II. continued to demand the Reſtoration of theſe Iſlands; and engaged in two Wars with them on that account, in which they were very handſomely beaten: But they raiſed up a Faction againſt that Prince at home, as they had done againſt his Father; and he was compelled to make Peace with them: King *James* II. made the like Demands, and was preparing to call thoſe High and Mighty Merchants to an Account; which occaſioned their joining ſo vigorouſly in depoſing of him; and ever ſince they have been our good Allies. We muſt not quarrel with them, if they beat us out of every otherBranch of Trade: But in no Reign have we ever expreſly relinquiſhed our Right in theſe invaluable Iſlands, to this Day.

To return to our Subject: It was at firſt, as I have obſerved, abſolutely neceſſary to provide a large Joint-Stock, to fit out a Fleet of Force ſufficient to eſtabliſh and defend our Plantations and Settlements in the *Eaſt-Indies* againſt the *Dutch:* And it is much to be lamented, that, inſtead of quarrelling with our Princes, we did not enable them to ſupport the Pretenſions this Nation had to the Spice-Iſlands, againſt the Uſurpations of the *Hollanders*. But when we had actually loſt theſe, the *Eaſt-India* Trade was not of the like Importance as before: We had, indeed, afterwards, a Trade to the Continent of *China* and *India*, from whence we import Silks, Muſlin, Calicoes, Tea, Pepper, Jewels, *&c.* But this we have in common with the *French*, *Dutch*, and *Danes*; and this might have been carried on by private Traders, probably, with more Succeſs than by a Company; as I have heard the famous *Pit* affirm, though he was twice Governor of the Coaſt of *Cormandel*, for the Company. And we find, that the *African*, or *Guinea* Trade, has been much improved ſince it was laid open: Indeed, it is very proper, that thoſe who uſe any Trade, ſhould contribute to maintain the Forts, and Forces, that are neceſſary to preſerve the Nation in the Poſſeſſion of that Trade; and this is done, by obliging the Merchants, who trade to any Country, to allow five or ten *per Cent.* or ſuch other Sums as ſhall be found neceſſary for the Support of them. This the Statute requires, that lays open the *African* Trade: But there is no Manner of Neceſſity of excluding all the King's Subjects, but the Company, from trading; this would be prejudicial to the Nation, as well as to particular Men; for private Merchants will uſe much more Frugality, and Diligence, in carrying on their Trade, than Companies will; and manage better for themſelves, than Directors, or Committees, do for them: It is obſerved of all Companies, not excepting that of the *Dutch Eaſt-India* Company, That their Directors, Governors, Factors, and Officers, grow exceſſive rich, while the Company itſelf is miſerably poor; every Man regarding his private Intereſt, more than that of his Maſters, or of the Publick.

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The only Remark I ſhall make more on this Trial, is, That it appears from the Arguments of the Counſel on both Sides, that the Commiſſions, which were granted to the firſt Adventurers to the *Indies*, and other Parts of the Heathen World (and particularly, that to) authorized them to ſpoil, plunder, and enſlave the poor defenceleſs Natives; take their Countries from them; and even to kill them, if they refuſed to ſubmit to the Dominion of the Chriſtians, and embrace their Religion: But how, or when, this *Mahometan* Doctrine came to be introduced among the People, whoſe Religion teaches them univerſal Benevolence and good Will to Mankind, and ſtrictly forbids all Violence and Injuſtice, is not eaſy to conceive: Certain it is, that it was originally a Popiſh Doctrine; and that both the Kings of *Spain* and *Portugal* gave the like Commiſſions to the Diſcoverers of the *Eaſt* and *Weſt-Indies*, with the Concurrence of the Pope; or rather by his Authority: For it was by Virtue of the Pope's Bulls, that the one aſſumed the Dominion over all Pagan Countries in the *Eaſt*, and the other over thoſe in the *Weſt*; and by Virtue thereof they invaded the Natives in a hoſtile Manner; took their Countries from them, and enſlaved them; in which they exactly copied after *Mahomet*.

Dominion was then univerſally held to be founded in Grace; and none were thought to have a Right to this World, but true Believers; and thoſe particularly, to whom the Pope, the then Head of the *Latin* Church, transferred thoſe Countries that remained in the Poſſeſſion of the Pagans: And though the Proteſtants, after the Reformation, renounced the Pope's Authority, yet they ſtill held, that Chriſtians might juſtly invade Heathen Countries, and uſurp the Dominion of them; as appears by that Commiſſion of *Michelburn*'s, above-mentioned. And our Saints, during the Grand Rebellion, carried this Principle ſo far, that they held, *No Man was entitled to any Thing in this World, that was not of their Party*; and made no Scruple in plundering and enſlaving all other Chiſtians that differed from them; which was a remarkable Improvement on that Popiſh Doctrine, That DOMINION IS FOUNDED IN GRACE; eſpecially, as it was held by Men who pretend to abhor nothing more than Popery.

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The Trial of JOHN HAMPDEN, Esq; for an *High Misdemeanor*, at the *King's-Bench* Bar, 6 *February*, 1683. *Hill.* 36. *Car.* II.

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Hampden's Trial.

The Indictment.

THE Indictment charges, That the Defendant, *John Hampden*, on the last Day of *June*, in the 35th Year of the King, did, at the Parish of St. *Giles in the Fields*, in the County of *Middlesex*, unlawfully assemble, consult, and agree, with divers other evil disposed Persons, to raise a Rebellion, and to provide Forces and Arms in divers Parts of the Kingdom; and, the better to accomplish their said evil Purposes, they did, on the Day and Year aforesaid, agree to send certain Persons to *Scotland*, to invite the Malcontents there to join with them in the said Conspiracy.

The Reasons given, why the Defendant was not charged with High Treason.

Mr. Attorney, in opening the Evidence, observed, that the Matter in this Trial had already been under Examination at several Trials for High-Treason, at which the Enemies of the Government pretended, the Persons accused lay under great Hardships, in not having the Advantage of Counsel, and their Witnesses examined upon Oath; for which Reason his Majesty was pleased the Defendant should be prosecuted in a milder Way, to give him all Opportunities of clearing his Innocence, if he had Witnesses to do it: And if the having Counsel would contribute to the Advantage of his Cause, he might have them too. He observed farther, that the Earl of *Essex*, one of the Conspirators, had given Judgment against himself; but the Party had been so officious to fling his Death upon the Government: That two more of this Cabal had received the Judgment of the Law; and the remaining two, the Lord *Howard* and the Duke of *Monmouth*, having confessed the whole Matter, the King had extended his Mercy to them; and they were summoned to be here this Day, that the Malcontents might see there was nothing intended by this Prosecution, but the settling the Peace and Quiet of the Kingdom.

Duke of Monmouth *summoned as a Witness.*

Then the Duke of *Monmouth* was called, and Oath made of his being served with a *Subpœna*, to appear as a Witness; but his Grace did not think fit to attend.

Lord Howard's *Evidence.*

Whereupon the Lord *Howard* was sworn, and gave an account of the Lord *Shaftesbury*'s having formed a Conspiracy, to incite a Rebellion about *Michaelmas* 1685. as he had done at the Trials of *Sidney* and *Russel*; and that *Shaftesbury* going beyond Sea the following *November*, the Duke of *Monmouth*, the Earl of *Essex*, the Lord *Russel*, Colonel *Sidney*, Mr. *Hampden* the Defendant, and himself, (Lord *Howard*) formed themselves into a Cabal, to carry on the said Conspiracy, and met at Mr. *Hampden*'s House about the Middle of *January*, when they discoursed of raising Money, and of the Time and Place most proper to begin the Insurrection. But the Principal Thing resolved on, was to settle a Correspondence with Lord *Argyle*, and the Malcontents in *Scotland*, that they might give the Government all the Diversion they could, both at Home and Abroad; and that they all concurred and assented to this Resolution.

Cabal of six.

The Court demanding what Grievances they complained of in the Administration, to induce them to enter into this Conspiracy; his Lordship answered, They thought it a Grievance, that such a Force was put upon the City at the Election of Sheriffs; and observed the ill Consequences this would have upon Juries.

At their next Meeting, which was in *February* at the Lord *Russel*'s, about a Fortnight after the first; they agreed to send *Aaron Smith* to *Scotland*, and *Sidney* took upon him to manage that Affair; and told the Deponent afterwards, That he had sent *Smith*, and given him threescore Guineas to bear his Charges; and that he was then at *Newcastle*, from whence he heard from him: That in Pursuance of this Message, the Lord *Melvin*, Sir *John Cockram*, and one *Campbel*, of the Lord *Argyle*'s Name and Family, came up to *London*, under Pretence of carrying on a Plantation in *Carolina*: That these Gentlemen were known to the Lord *Russel* only; and he was to write the Letter to them, which he, (Lord *Howard*,) supposed he did.

Then Proof was made by the Master of the Inn, at *Newcastle*, where *Smith* lay; and by the Guide that conducted him towards *Scotland*, of his being at *Newcastle*, at the Time the Lord *Howard* testified.

Proof the Scotish *Malcontents came up to* London.

Atterbury, the Messenger, also proved his apprehending the two *Campbels*, and some of the rest of the *Scots* Gentlemen in *London*, who came up about this Business: And Sir *Andrew Foster* deposed, That Sir *John Cockram*, *Monroe*, Sir *George Campbel*, and his Father, were in *London* the last Summer; and that he saw a Commission to Sir *John Cockram*, to make a Purchase in *Carolina*.

Mr. Hampden's *Defence by his Counsel.*

Mr. *Williams*, being of Counsel for Mr. *Hampden*, then entered on his Defence, and observed, That Lord *Howard* not being positive as to the Day of the Consultation in *January*, it was not possible to contradict him in that Particular; and that there was not any one Circumstance, unless the Matter of *Aaron Smith*, to confirm his Testimony: That it was strange there should not be one Person more, who could prove that any of these Gentlemen were at that Meeting at Mr. *Hampden*'s, or the other Meeting at Lord *Russel*'s.

And though he testified there was a Discourse of raising Men, providing Arms, Money, *&c.* in *January*, yet nothing was done thereupon; though no Discovery was made till the *July* after: He insisted also, That Lord *Howard* appeared, by his own Evidence, to be very deep in the Conspiracy; and gave this Evidence against others to get his own Pardon: *And he had, by exposing this Gentleman, and the Blood of others, procured himself a Pardon:* Was it reasonable therefore to believe what he had said?

The Chief Justice thereupon said, What do you mean by that, Mr. *Williams?* It is a harsh Word, you had need explain yourself; as though the King's Pardon were to be procured by Blood.

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Mr. *Williams* anſwered, I mean no more than that, there being other Witneſſes before my Lord *Howard*, it concerned him to give a home Evidence, or he could not have expected his Pardon. Another Objection he made to this Lord's Evidence was, That he owned he knew nothing of the Plot; and had ſaid, Colonel *Sidney* and the Lord *Ruſſel* were innocent: And that he had been guilty of Atheiſtical Expreſſions; and, becauſe he had ſaid, *That he could not have his Pardon, till the Drudgery of Swearing was over.* That he ſhould call that a Drudgery, which was manifeſtly his Duty (*viz.*) the giving his Teſtimony to preſerve the King and Government, was but an odd Inſinuation; and, as he underſtood it, his Lordſhip ſtrained a little, to make his Diſcovery the more profitable to him.

As to what concerned *Aaron Smith*, he did not ſee how that affected Mr. *Hampden*; he ſaid no more of him, than that he was in the Company.

The Chief Juſtice obſerved, he ſaid, *He conſented to it.*

The Evidence for the Defendant.

Mr. *Williams* replied, It muſt be by his Silence; for he did not teſtify he ſaid one Word: Nor was it proved at laſt, that *Aaron Smith* was in *Scotland*, or concerned in the Conſpiracy; or, that the Defendant was ever in the Company of thoſe *Scotiſh* Gentlemen.

The Counſel then called the Defendant's Witneſſes, *viz.* Mr. *Ducas*, Mr. *Howard*, the Earl of *Clare*, Dr. *Burnet*, *&c.* who depoſed, that they had heard the Lord *Howard* ſolemnly declare, he knew nothing of any

Dr. Burnet.

Plot: And particularly Dr. *Burnet* depoſed, that the Lord *Howard* proteſted, with Hands and Eyes lifted up, he knew of no Plot; and that, before the Lord *Howard* made thoſe ſolemn Aſſeverations, he was poſſeſſed with a Belief of the Plot.

Mr. Recorder thereupon demanded of the Doctor, If he believed the Plot now?

Dr. *Burnet* anſwered, *I make no Doubt, as to the Aſſaſſination.*

Mr. *Blake* depoſed, the Lord *Howard* ſaid, *He muſt not have his Pardon, till the Drudgery of ſwearing was over.*

Witneſſes being called to Mr. *Hampden*'s Character, the Lord *Paget* depoſed, That he believed the Defendant to be a Man of Honour and Virtue, and lived a ſtudious contemplative Life; and therefore was not likely to be engaged in ſuch a Deſign: That he was not of a turbulent, ſeditious Spirit, but a peaceable Man, and of little Acquaintance; and he never heard him expreſs any Diſſatisfaction, as to the Government.

Mr. *Pelham* gave him the like Character; as did Sir *Henry Hobert:* Adding, that the Defendant went over to *France* in 1680, and remained there till *September* 1682, and deſigned to go over to *France* again.

Other Witneſſes depoſed, they had heard the Defendant expreſs a great affection for the Government; and that, when he was told the Duke of *Monmouth* and the Lord *Grey* lay hid, he ſaid, I will never fly, or conceal myſelf; for my Conſcience reproaches me with nothing.

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Then Mr. *Williams* was about to produce a Witneſs, that the Lord *Eſſex* had ſo mean an Opinion of the Lord *Howard*, that it was not likely he would enter into Conſultations with him about ſuch Matters.

The chief Juſtice anſwered, They muſt not bring Evidence of what a third Perſon thought of the Lord *Howard*; and beſides the Record of the Conviction of the Lord *Ruſſel* and Colonel *Sidney*, who were convicted on my Lord *Howard*'s Teſtimony ſupported his Credit more than the Report of a third Perſon could impeach it: And, it ſeemed, my Lord *Eſſex* had ſuch an Opinion of my Lord *Howard*'s Evidence, that he cut his Throat upon it.

Then one *Murray* was called, to give an Account of my Lord *Howard*'s Atheiſtical Diſcourſes; but Mr. Attorney objected againſt ſuch Evidence, as it was impoſſible his Lordſhip could be prepared to give any Anſwer to it.

Lord *Howard* alſo ſaid, This preſſes hard upon my Reputation; and I profeſs before God, I do not know this Fellow: I never ſaw him in my Life: Who is this Raſcal they bring here? I would fain have this Fellow to dare ſay this any where elſe.

The Chief Juſtice obſerved, That it was very hard thus to rake into the whole Courſe of a Man's Life: Whereupon his Teſtimony was waved; and the whole Evidence for the Defendant being ended, the Counſel on both Sides agreed to make no Obſervations on the Evidence, but leave it to the Court.

The Directions of the Chief Juſtice to the Jury.

The Chief Juſtice, in his Directions to the Jury, obſerved, That the Counſel on both Sides had drawn Inferences to their Advantage, from the Duke of *Monmouth*'s being *ſubpœna'd* as a Witneſs in this cauſe: Thoſe for the King urged, they had *ſubpœna'd* him to ſhew the Fairneſs of their Proceedings; and that they were not afraid to have the whole Truth appear: And the other Side inſinuated, that the Truth of the Conſpiracy ought to be ſuſpected, becauſe he did not appear.

As to the Objections that had been made to the Lord *Howard*'s Teſtimony, it was very ſtrange it ſhould be made an Objection, that, before he had his Pardon, he gave his Evidence out of Fear, and in order to get his Pardon; and it ought to be an Objection too, that he had got his Pardon, and therefore ought not to be believed: But if, after he was pardoned, when he was under no dread or Fear, he ſaid the ſame things he did when he might be in Fear, it was a plain Anſwer to that Objection, of his being moved by his Fears.

That he might be particular, as to the Time he converſed with the Lord *Shafteſbury* about Sheriffs, and the Return of Juries, becauſe the Sheriffs are always ſworn the Day after *Michaelmas*-Day; but it was not ſo eaſy for him to fix the very Day when the Conſultation in *January* was, becauſe there was not ſo material a Circumſtance to fix it in his Memory.

The Reaſon there was nothing done by the Conſpirators, between the Time of the Conſultation in *January* and *July* following, was, becauſe a Treaty was to be negotiated with the *Scots*, before they could reſolve on any

Thing

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Thing and the *Scotiſh* Agents did not come up to *London* till *July*.

And as to the Lord *Howard*'s ſaying, He knew nothing of a Plot; and that they had done nothing but what was legal; he knew ſome People believed the raiſing Tumults, and the making Seditions and Commotions, was a legal Way to obtain their Ends: And what would they not do, under a Perſuaſion, that all they did was according to Law? They were taught, by the Religion they profeſſed, to oppoſe the Government. *The Old Cauſe was a good Cauſe to this Day, in ſome Mens Opinion:* They could die in it; and thank God for being concerned in it; and yet called themſelves Proteſtants. But this was rank Treaſon and Rebellion, let Men pretend Conſcience, or what they would. Was it not under Pretence of Religion, that King *Charles* I. was brought to the Block?

As to Lord *Howard*'s ſwearing, that he could not have his Pardon till the Drudgery of the Swearing was over; it muſt be a Drudgery and irkſome to him, to call himſelf Traitor ſo often, in a Court of Juſtice; though it was his Duty to tell the Truth: He might, indeed, have given it a ſofter Term; but he had Reaſon, in ſome Senſe, to call it a Drudgery: But, as he did ſwear, before he had a Pardon, upon all Occaſions, when he was called to be a Witneſs; ſo when he had his Pardon, he did ſwear the ſame thing: The Want of a Pardon, therefore, did not influence his Teſtimony: He was under no Fear, but as free as any Subject the King had; and yet he made Oath of the ſame Things now, as he did at the Trials of the Lord *Ruſſel* and Colonel *Sidney*.

And notwithſtanding the Evidence that had been given of Mr. *Hampden*'s loyal and peaceable Diſpoſition, he obſerved from the Teſtimony of his own Witneſſes, that there had been ſome Jealouſy of him; and that he lay under hard Cenſures as well as other People. For in diſcourſing of the Plot, the Advice given him was this: My Lord *Grey* is gone, and the Duke of *Monmouth* is gone; Why wont you go? Why ſhould this Advice be given to him, if there was no Suſpicion of his being concerned? As to his ſaying *I will not go*, which they gave as a Proof of his Innocence, there was the ſame Innocence in my Lord *Ruſſel* and Colonel *Sidney*, and all the ſix, except the Duke of *Monmouth*; and he did abſcond. They knew no Reaſon why they ſhould ſtay to be taken, any more than *Weſt* or *Rumſey*; and yet that was not uſed by them as an Argument of their Innocence. As to his Intentions of going abroad, it was much he did not put them in Execution. He came over at an unluckly Time, when the City was in a Ferment, and Men were filled with Fears and Jealouſies; and theſe might animate him, as they did other People: It had been much better, for his Advantage, he had never come out of *France*, or, that he had returned thither ſooner.

As to the Lord *Howard*'s denying he was in a Plot; Could it be ſuppoſed, that a Man guilty of High-Treaſon would proclaim his own Guilt? Could it be ſuppoſed he ſhould tell Dr. *Burnet*, that he, and Colonel *Sidney*, and Mr. *Hampden*, were in a Plot, and make it common Talk? His Proteſtations were ſo far from being an Argument of his Innocence, that they were rather an Argument of his Guilt: If he had been free from Suſpicion, why ſhould he tell Colonel *Sidney*'s Footman, and this man and the other, *I know nothing of the Plot; and neither I, nor any Man, I am ſure, is concerned in it?* This Over-Caution was an Intimation, that there was ſomething more than ordinary in the Matter; ſo that the Argument turned the other Way: And if it did not, the Witneſſes muſt be looked upon as Perſons diſaffected to the Government; namely, Dr. *Burnet*, Lord *Paget*, Lord *Clare*, and the reſt. It muſt be ſuppoſed, he did not think fit to truſt theſe loyal Gentlemen with his Confeſſions: This they ought to value themſelves upon; it was for their Credit and Reputation: They ſhould not therefore make it an Argument againſt my Lord *Howard*, or againſt the Credibility of his Teſtimony, that he did not truſt them with the Secret.

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The Chief Juſtice concluded, That this was a Cauſe of great Conſequence, wherein the Peace and Government of the Kingdom was concerned in a very high Degree: And had there been another Witneſs as poſitive as my Lord *Howard*, the Charge would have amounted to High-Treaſon; but as there was but one Witneſs, ſupported by other corroborating Circumſtances, he was only charged with a Treſpaſs; the Tendency whereof, however, was to bring us into Confuſion, as in the Times of the late Rebellion. Men might make fair Pretences; as that they deſigned only the Security of the Government, and the Proteſtant Religion: But they would have done well to have waited till they had a legal Authority to conſult of thoſe High Matters that they pretended to ſecure: What had they to do to aſſume ſuch a Power? Upon the whole, the Lord *Howard* had poſitively ſworn the Matter of Fact laid in the Indictment, and was ſupported by the Witneſſes that teſtified *Smith*'s going to *Scotland*; the *Scotiſh* Gentlemen's being in *London*; and the Sham and Cant of *Carolina*; and was not contradicted by any Thing that carried any Probability of an Anſwer; and he left it to the Jury to determine, whether the Defendant was guilty.

The Defendant convicted.

The Jury thereupon withdrawing, returned within the Space of half an Hour; and brought in their Verdict, that the Priſoner was GUILTY.

Mr. Attorney, on *Tueſday* the 12th of *February*, prayed Judgment againſt the Defendant: That the Court would ſet a good Fine upon him, and he might find Sureties for his good Behaviour for Life: Whereupon Mr. *Williams* repreſented, that Mr. *Hampden* was but Heir apparent to his Father, who was alive: So that he had only the Proſpect of an Eſtate; very little in Poſſeſſion; and, according to *Magna Charta*, Fines ought to be ſet with a *Salvo Contenemento*.

The Chief Juſtice anſwered, If the Crime had been proved by two Witneſſes, it would have

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have wrought a Forfeiture of his Eſtate and Life too, and corrupted his Blood; and that it deſerved a great Puniſhment, if they could impoſe one adequate to his Deſerts; and the Clauſe in *Magna Charta* never meant Fines for great Offences, but Amerciaments only.

Fined 40,000 l.

Then a Fine of 40,000 Pounds was ſet upon the Defendant; and he was ordered to be impriſoned till he paid it, and find Sureties for his good Behaviour during Life: But the Chief Juſtice told the Defendant, If he would apply himſelf to his Majeſty, he might find Mercy.

Then Mr. *Hampden* being committed for his Fine, his Bail were diſcharged.

Remarks on Mr. Hampden's Trial.

As every one of the ſix Noblemen and Gentlemen, charged with aſſembling and conſulting to raiſe a Rebellion, and depoſe the King, either confeſſed the Fact, or were convicted of it; there is little Doubt to be made of the Truth of the Conſpiracy, or of their Share in it. And I queſtion whether their Friends at this Day would endeavour to diſprove the Charge; or rather, whether they do not look upon them as Heroes and Patriots, that endeavoured to preſerve the Religion and Conſtitution of their Country, with the Hazard of their Lives.

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I ſhall only obſerve here, that though Biſhop *Burnet*, in his poſthumous Hiſtory, ſpeaking of the intended Aſſaſſination of the King at the *Rye-Houſe*, ſays, *It was all but rambling Diſcourſe, all was but Talk:* Yet at this Trial of Mr. *Hampden*, when he was asked, If he believed the Plot; he anſwered, *I make no Doubt, as to the Aſſaſſination.*

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The Trial of WILLIAM SACHEVERELL, Eſq; and twenty-one more, for a *Riot*, in the Court of *King's-Bench*, the 2d of *May*, *Eaſter-Term*, 1684. 36 *Car.* II.

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Sacheverell's Trial.

The Information.

AN Information was preferred by Sir *Robert Sawyer* the Attorney General, againſt *William Sacheverell*, Eſq; *George Gregory*, Eſq; *Richard Mansfield*, Eſq; *Henry Plumtree*, Eſq; *Charles Hutchinſon*, Eſq; *John Greaves*, Gent. *William Greaves*, Gent. *&c.* Setting forth, that on the twenty-ninth of *September*, in the thirty-fourth Year of the preſent King, at the Town of *Nottingham*, there was an Aſſembly duely ſummoned, before *Gervas Wild*, then Mayor of the ſaid Town, for the electing and ſwearing a new Mayor of the ſaid Town, for the Year enſuing: That the ſaid Mayor proceeding to Election, made a Proclamation for all Perſons to depart, that were not concerned in the Election, and for keeping the Peace; and that they, the ſaid *Will. Sacheverell*, and the reſt of the Defendants, nevertheleſs, well knowing the Premiſes, and being unconcerned in the ſaid Election, did diſturb the Peace of the Place, ſet the Town together by the Ears; and, in a riotous Manner, aſſemble themſelves with many other ill-diſpoſed Perſons, to the Number of five hundred, and continued the Riot for the Space of ſeven Hours, with a great deal of Noiſe and Tumult; and with Force and Arms, did riotouſly carry away, and detain a Mace, from one *John Malin*, then one of the Sheriffs of the ſaid Town; to the great Terror of his Majeſty's Subjects, to the evil Example of others, and againſt the King's Peace, *&c.*

The Caſe, as ſtated by Mr. *Sacheverell*, is as follows: The Town of *Nottingham* claimed to have been a Corporation by Preſcription: King *Edward* I. granted the Burgeſſes of that Town, the Privilege of chuſing a Mayor annually, they having only Bailiffs before: King *Henry* VI. made it a County, and gave them the Privilege of chuſing two Sheriffs, inſtead of Bailiffs; and of electing ſeven Aldermen out of their Number, one of them to be Mayor annually: That the Aldermen, while they remained ſuch, ſhould be Juſtices of Peace; and, that the Town of *Nottingham* ſhould for ever be a Body Corporate, by the Name of Mayor and Burgeſſes: And that no Charter ſince, or any By-Law, had given the Aldermen any more Power than they held by that Charter, which was no more than every Burgeſs of the Town had; except the Privilege of being Juſtices of Peace, and wearing Gowns and Hoods.

That the Aldermen, however, in the Reign of King *James* I. did take upon them to be Part of the Council, and intermeddle in the Affairs of the Town; and pretend to have a Right of letting, and diſpoſing of the Corporation-Lands, Bridge-Lands, and School-Lands; of which the Burgeſſes complained to the Lords of the Council, in the Year 1605, and prayed Redreſs: The Council referred the Matter to the Judges of Aſſize; but it was afterwards amicably agreed, That there ſhould be a Council of twenty-four Perſons; (the Aldermen for the Time being always excepted) and theſe, with the Mayor, or (the Majority of them) ſhould have the letting or diſpoſing of the Town-Lands; and that Pretence of the Aldermen to diſpoſe of their Lands, or to be of the Town-Lands, or to be of the Council, was given up, till of late Years.

That the Burgeſſes being informed, That in *Eaſter*-Term laſt, the Mayor, and ſome of the Aldermen of the Town, had a Deſign to ſurrender the Charter of that Corporation; for the Prevention of the ill Conſequences thereof, they entered four Caveats, two at the Lord Chancellor's, and two at the Attorney-General's; one of which, in each Place, was againſt paſſing any new Charter to the Town of *Nottingham*, without the Privity, Conſent, or Hearing of the Burgeſſes; the other againſt the accepting of any Surrender of any Charter of that Town, without the like Privity, Conſent or Hearing.

However,

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However, the Mayor called a Council the twenty-fifth of *July* laſt, without giving Notice what the Buſineſs would be; and there appearing at the Hall the Mayor, five Aldermen, and twenty-two of the Council, beſides Alderman *Toplady*, whoſe Election was conteſted; the Mayor cauſed the Queſtion to be put, for ſurrendering their Charters: And, though it was objected by ſome of the Council, That the Aldermen had no Right to vote; yet the Mayor cauſed the Poll to be taken, and admitted the Aldermen and Mr. *Toplady* as Voters: And there appeared to be the Mayor, four Aldermen, and nine of the Council for ſurrendering; and Aldermen *Greaves*, the two Coroners, and ten more, were againſt ſurrendering; ſo that the Votes were equal: But, if *Toplady*'s Vote was not good, (as he held it was not) Thoſe that were againſt the Surrender were a Majority: And if the Aldermen had no Right to give their Votes, as he conceived they had not, either by Preſcription or Charter; then there were only the Mayor and nine of the Council for the Surrender, and thirteen of the Council againſt it.

Nor had the Council, as he apprehended, any Right to ſurrender their Charters, if there had been a Majority of them; being only elected by the reſt of the Burgeſſes, for the Management of the Revenues of the Corporation, and the Diſpatch of ſome other ordinary Affairs: All the Burgeſſes were intereſted in the Matter, and had as good a Right to vote as any of the Council; nor could the Mayor, Aldermen, or Council, bind their Hands, or ſurrender their Charter, without the Conſent of the Burgeſſes: However, the Mayor, as ſoon as the Vote paſſed in the ſaid Aſſembly, for the Surrender of the Charter, produced an Inſtrument in writing, purporting a Surrender, and cauſed the Town-Seal to be fixed to it, and ſent it up to *London*.

Whereupon the Burgeſſes of *Nottingham*, who were againſt the Surrender, adviſed with Counſel, Whether many of their Cuſtoms and Privileges in reference to Trade, which they held only by Cuſtom or Preſcription, and the Lands they held of the Crown, and of private Perſons, which were of a great annual Value, would not be loſt by a Surrender of their Charter?

To which the Counſel anſwered, That if the Charters of any Body Corporate were lawfully ſurrendered, the Corporation that held by ſuch Charters was diſſolved, and the Heirs of the Perſons that granted the Lands, would be entitled to recover the ſame; and as to the Crown Lands, his Majeſty might grant them again to the Corporation: But no new Charter would give them a Title to ſuch Lands, as had been granted by private Perſons, and enable the Corporation to keep them from their Heirs; as was reſolved by the Judges when the Monaſteries were ſurrendered; and therefore a ſpecial Act of Parliament was made, to veſt theſe Lands in the King.

That, if they claimed a Right of Common in other Men's Lands, their Preſcription for Common would be deſtroyed by ſuch a Surrender.

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That their Freedom from Tolls, in like Manner, would be loſt.

And to the laſt Queſtion, *(viz.)* Whether, if the Mayor and other Members, without the Conſent of the Body Corporate, ſhould ſurrender the Charters of the Corporation; the particular Perſons who received Damage thereby, might not have an Action againſt the Mayor and ſuch other Members? it was anſwered, They might: But to prevent the ſurrendering the Charter, and the Suits and Inconveniencies that might be occaſioned thereby, it was thought fit to preſent Mr. Mayor with their Senſe of his Proceedings, and declare their Diſſent to any Surrender; and accordingly a Writing was drawn engroſſed and ſigned, by between three and four hundred of the Burgeſſes, and preſented to the Mayor, on the 14th of *Auguſt*, as the Senſe of moſt of the Burgeſſes of that Town; in which Inſtrument they ſay,

That underſtanding the Mayor, and thirteen more of the Corporation, had, without the Conſent of the Burgeſſes, agreed to ſurrender the Charters, Liberties, and Franchiſes of the Corporation; and cauſed the Corporation-Seal to be affixed to an Inſtrument, for making ſuch Surrender; They, conſidering the great Damage it muſt be to the Corporation, and to every particular Burgeſs, if they ſhould be ſo ſurrendered, did ſignify their Thoughts on what they had done, and were about to do: That many of their Liberties and Franchiſes would be loſt, if ſuch Surrender ſhould be effected, as they had agreed to: They did thereby declare their Diſſent to thoſe Proceedings; and that they did not, nor ever would conſent that a Surrender of any Charter, Liberty, Franchiſe, or Privilege of the Corporation of *Nottingham*, ſhould be made; and that they would by all lawful Means oppoſe the ſame; and, in caſe they proceeded in the ſaid Surrender, they ſhould expect ſuch Satisfaction as the Law would give them.

The Burgeſſes alſo ordered Caveats to be entered at the Lord Chancellor's, the Lord Privy Seal's, and the Signet-Office, againſt ſurrendering their Charters without their Conſent, and againſt the paſſing any new Charter: A Petition alſo was ſigned by three hundred and ſixty Burgeſſes, deſiring to be heard, before any Surrender of their Charters ſhould be accepted.

But, contrary to the Expectation of the Burgeſſes, Mr. Mayor, having, as he ſaid, received Advice from *London*, that the Inſtrument he had ſent up for ſurrendering the Charters was not ſufficient; did, on *Saturday* the twelfth of *Auguſt*, without ſummoning a Council, affix the Town-Seal to another Inſtrument of Surrender; which was preſented to his Majeſty the 14th of *Auguſt*: And he ſuggeſts that the Mayor broke open the Cheſt, where the Town-Seal was kept, to come at it: The Seal being kept under three Locks and Keys, and the Officers who had them refuſed to deliver him the Keys, without calling

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a Council: From all which Conſiderations, they looked upon the Surrender that had been made of their Charters to be illegal, and hoped ſtill to preſerve their antient Rights, by the Aſſiſtance of the Courts of Juſtice: And when a new Charter was ſent down, they actually refuſed to accept it; but proceeeded to the Choice of a new Mayor, according to their old Charter; Mr. *Sacheverell*, one of the Honary Burgeſſes, and the reſt of the Gentlemen mentioned in the Information, being at the Town-Hall, and countenancing the Burgeſſes, in their Oppoſition to the new Charter; which appears to have been the Occaſion of preferring this Information againſt them.

The Defendants plead Not guilty.

All the Defendants, except *Plumtree*, pleaded *Not Guilty* to the Information; but alledged, That the Inhabitants of the Town and County of the Town of *Nottingham*, ought not to be drawn out of their ſaid County; and deſiring that a Jury of the County of *Kent* might try the Iſſue; the Attorney General agreed to it; and, accordingly a Jury of Gentlemen of the County of *Kent*, were impanelled, and ſworn: After which, the King's Counſel opened the Information and the Evidence; and calling their Witneſſes; Mr. *Pollexfen*, of Counſel for the Defendants, objected to the ſwearing Mr. *Wild*, Mr. *Edge*, and other Members of the new Corporation, as not being competent Witneſſes in this Caſe: He ſaid, There was a Diſpute, Whether the Old Corporation was in being, or not? and, whether the New Charter was a good Charter in Law? That the Matter was depending both in the *Chancery* and *King's-Bench:* A *Scire Facias* having been brought againſt the New Charter, and a *Quo Warranto* in this Court, againſt the Old; and, if it ſhould ſo fall out, that the New Charter, upon which the Information was founded, was not good in Law, the Cauſe muſt go for the Defendants: That the Members who claimed under the New Corporation, therefore, could not be Witneſſes; becauſe they would thereby maintain their Intereſt in the New Charter.

Tried by a Jury from Kent.

Objections to the Witneſſes.

The Chief Juſtice anſwered, they were not about to try, whether the Old or New Charter was good, that would not come in Queſtion on this Iſſue: But, whether there was a Riot committed by the Defendants, againſt the publick Peace.

Wild's *Evidence.*

Then Alderman *Wild*, who was Mayor at the time of the Riot, was ſworn, and depoſed, that on *Michaelmas-Day*, being the Day for electing the Mayor, he was waiting at his Houſe, in Expectation of the New Charter; and the Burgeſſes came to him, and would have had him gone with them to Church, as was uſual on that Day; but he told them the New Charter was coming, and deſired they would ſtay a little; however, they went to Church with Mr. *Sacheverell* at the Head of them, leaving him (the Mayor,) and ſome of the Aldermen with him: That the new Charter arriving immediately after, he went to the Town-Hall, in order to be ſworn; and ſent to the Church, for the Town-Clerk to come and adminiſter him the Oath, that he might act as Mayor under the new Charter: The Town-Clerk ſent him World at firſt, that he would not come; but not long after he came, with Mr. *Sacheverell*, and other Gentlemen mentioned in the Information, and many more, who were not Burgeſſes; and thoſe of them that were Burgeſſes had no Votes by the old Charter: That he was a little amazed to ſee ſo many Gentlemen; and he took the new Charter out of the Box, and ſhewed it them, and would have had Alderman *Edge* the Town-Clerk read it, but he refuſed; and ſome People cried out, *No new Charter*, *No new Charter*; and Mr. *Sacheverell* ſaid, this is not our Buſineſs here, we come for the Election of a Mayor by the old Charter: That he (the Mayor) then ſaid to Mr. *Sacheverell*, I know no Buſineſs you have here, nor a great many Gentlemen more; it would better become you to be in another Place: That Mr. *Scaheverell* then demanded, If he would proceed to an Election? And he (the Mayor) anſwered, He had a great deal to do, before he could proceed to an Election, he muſt be ſworn himſelf, and ſwear half a Dozen more, in the Room of thoſe that were left out in the New Charter: And then they cried out again, *No New Charter*, *No New Charter*; *A* Greaves *Mayor:* They bid Alderman *Edge* take his Book alſo, and proceed to Election; demanding of him (the Mayor,) Who he was for? To which he replied, They could not proceed to Election without his Conſent, and he diſclaim'd it; and then adjourning the Court from the Council-Room, to the Guild-Hall adjoining; he went out into the Hall, where ſitting on the Bench with ſome of his Brethern, he was ſworn: Then he told the Burgeſſes of the Town, the King had granted them a new Charter, and they ſhould hear it read: But Mr. *Gregory* and Mr. *Hutchinſon*, mentioned in the Information, coming from the Gentlemen in the inner Room, told him, they had elected Mr. *Greaves* Mayor; and deſired he (the Mayor) would come and hear him ſworn: But he (the Mayor) told them, they could not elect a Mayor without him, and he would have nothing to do with it; whereupon there was ſuch a Noiſe and Tumult, that they were afraid they ſhould have been pulled off the Bench; and Mr. Alderman *Parker* ſaid, Shall we ſtay here and be knocked on the Head? That he replied, He hoped there was no Danger of that; and commanded Silence while the New Charter was reading: Whereupon an honeſt Gentleman, a Barriſter, took the Charter, and read it to the Burgeſſes, as far as they would give him leave: That he made Proclamation for Silence, and keeping the Peace, ſeveral Times, commanding all that had no Buſineſs there to depart; but they were ſo outragious, that Alderman *Parker* apprehending his Life in Danger, ran out of Court: He (the Mayor) ſtaid ſome little time after; but finding nothing could be done for the Noiſe, he adjourned the Court to his own Houſe, and went away; and was no ſooner come Home, but Mr. *Gregory*, Mr. *Hutchinſon*, and ſome other Gentlemen, came after him, and very ſaucily demanded his Mace:

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That

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That he anſwered them, he received it by the King's Authority, and to the King's Authority only ſhould reſign it: They had nothing to do in the Election, either by the New or the Old Charter; and thereupon they went away: And when he had ſworn all thoſe that were in the new Charter; they proceeded to Election, and choſe Mr. *Toplady* Mayor, and went in the uſual Manner, and proclaimed him at the Market-Croſs; and while they were proclaiming him, came *Sherwin* and *Green*, and a great many More, and cried out, *No new Charter, No new Charter. A* Greaves *Mayor*; ſhouting and throwing up their Hats: And the Court demanding, who was at the Head of this Rabble? He anſwered He believed, if Mr. *Sacheverell*, and the reſt of the Gentlemen, had not been there, they had met with no Diſturbance; it was they that abetted and countenanced the Tumult.

That being apprehenſive the Tumult would increaſe, the next Day being Market-Day, and they might be knocked on the Head, he diſpatched a Letter to the Duke of *Newcaſtle*, to come to their Aſſiſtance; and he came with ſome Troops, and ſtaid till the Town was quiet: However, the other Side had proclaimed their Mayor *(Greaves)* at the Market-Croſs firſt, as they (the New Charter Men) did *Toplady*; it being uſual to proclaim the Mayor on the Day of Election, and on the Market-Day following.

It being demanded, If Mr. *Sacheverell* was a Burgeſs; the Mayor anſwered, He was a Burgeſs by the Old Charter; but was not however, one of the Electors; nor had any thing to do there: The Electors were the Mayor, Aldermen, Sheriffs, Coroners, and the reſt of the Council, by both Charters; none of the other Burgeſſes uſed to appear at the Election.

Malin's *Evidence.*

Mr. *Malin*, one of the Sheriffs of *Nottingham*, confirmed the Teſtimony that Mr. *Wild* the Mayor had given; and added, that the Mayor having ordered Proclamation, for all to depart out of the Council-Chamber, that had no Buſineſs there; and a Tumult being made, it was with Difficulty he eſcaped from them into the Town-Hall: And they laid their Hands on the Mayor's Mace to have ſtopped it; but the Serjeant got away with it, and went out with the Mayor and ſeveral of the Aldermen; and Mr. *Sacheverell* cried out ſeveral Times, *ſtop the Books:* That he (the Sheriff) was crowded out, and not ſuffered to take his own Mace; and thought he ſhould have been knocked on the Head: That he ſent the Serjeant for his Mace, and they would not let him have it: That he went himſelf afterwards for the Mace, and they reſcued it from him, and would not let him bring it away: And that the Burgeſſes were ſo tumultuous in the Hall, that Alderman *Parker* ran away, leſt he ſhould be knocked on the Head.

Rippon's *Evidence.*

Alderman *Rippon*, being ſworn, confirmed the Teſtimony of *Wild:* The Mayor alſo added, that his Clothes were torn off his back, in endeavouring to ſave the Charter from being torn in Pieces; and that the Tumult in the Hall, was occaſioned chiefly by two of the Gentlemen coming out of the Council-Chamber into the Town-Hall, and demanding of *Wild* the Mayor, that he would come into the Council-Chamber, and ſwear *Greaves* in Mayor, whom they had taken upon them to elect, though no Mayor could be elected but in the Preſence of the old Mayor: That the Mayor and Aldermen, finding themſelves in Danger, adjourned to the Mayor's Houſe; where they choſe Mr. *Toplady* Mayor, by the New Charter, and afterwards proclaimed him as uſual.

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Reynolds's *Evidence.*

Mr. *Reynolds*, who carried down the New Charter, being ſworn, atteſted the Truth of what *Wild* the Mayor had teſtified: As did alſo Alderman *Parker*; who added, that expecting to be knocked on the Head, and with much Difficulty getting out of the Town-Hall, he went and drank a Glaſs of Wine, for he was almoſt ſpent.

Alderman Parker's *Evidence.*

Whereupon *Jefferies*, the Chief Juſtice, obſerved, *That was to recover his Heart again that was ſinking; for an Alderman's Heart generally ſinks in ſuch a Fright.*

Parker replied, He went back again afterwards; for, he ſaid if they muſt be knocked on the Head, he would go and be knocked on the Head with them; which gave the Chief Juſtice Occaſion to obſerve again, *That his Courage came again, when he had a Glaſs of Wine.*

Then *Parker* proceeded, and ſaid, He met *Wild* the Mayor, and ſome of his Brethren, coming from the Town-Hall, and went with them to the Mayor's Houſe; where they choſe a Mayor, according to the new Charter; and proclaimed him, as the former Witneſſes had teſtified: Adding, that *Greaves*, whom the other Party pretended to have choſen Mayor, conteſted with the Mayor in the Church the next *Sunday*, for the Chair; but it was not yielded to him.

Somner's *Evidence.*

Somner the Sheriff's Serjeant, being ſworn, confirmed ſeveral of the Particulars the former Witneſſes had atteſted; and depoſed, That the Sheriff's Mace was wreſted from, him, by the Company in the Council-Chamber; and, that neither he, nor his Maſter the Sheriff, were ſuffered to have it again; and that he *(Somner)* was beaten by ſome of the Rabble, when he deſired them to be quiet.

Wright's *Evidence.*

Mr. *Richard Wright* alſo was ſworn, and confirmed the Evidence given by the former Witneſſes.

Obſervations of the Defendants' Counſel on this Evidence.

Mr. *Pollexfen*, Counſel for the Defendants, then obſerved in their Behalf, That the Information charged a tumultuous Aſſembly on the Defendants, to diſturb the Election of a Mayor upon the new Charter: That it charged alſo the taking away the Mace from *Malin*, who was then Sheriff: But *Malin* was Sheriff by the old Charter, and not by the new; and, if ſo, then by the Surrender of the old Charter, he was out of Office, and the Information failed as to that Point.

And as to the aſſembling and acting of the Defendants, and others, under the old Charter; the Mayor was by that to be elected, or rather confirmed, and take his Place on *Michaelmas*-Day: Now *Greaves* was nominated according to Cuſtom, on the 14th of *Auguſt*, before, and agreeably to their Conſtitution by the old Charter: If the former Mayor was not preſent, the Coroner had Power to ſwear the new one: And *Greaves* was ſworn by

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by the Coroner, in the Abſence of the laſt Mayor: All Things were done by the old Corporation, as uſual: It was ſaid, indeed, that ſome of the Defendants were not of the Corporation, and others had no Vote at the Election; but, admitting they had no Voice, yet there was no Crime: For, if a Burgeſs was preſent at the Election of the Town Officers, and did adviſe or aſſiſt at an Election, (and he was not altogether unconcerned in it); this of itſelf could be no Crime: The Day was *Michaelmas*-Day, the uſual Time of Election; the Place, and Proceedings, were according to Cuſtom, and the old Charter; for they went firſt to the old Mayor's, then to Church, and from thence to the Council-Chamber; where the Mayor uſed to be confirmed, who was nominated before: There they did elect, or confirm, *Greaves* Mayor, and ſent to the old Mayor, who was then in the Hall, to be preſent at the Swearing of him; all which was according to the old Charter; and the ſole Queſtion therefore was, Whether that Charter was in Force? For, if it was, their ſwearing *Greaves* Mayor, and demanding the Mace of *Wild*, muſt be regular, as was alſo their proclaiming the new Mayor: That the crying out, A *Greaves* Mayor, was but a Sort of Applauſe, very uſual at ſuch Elections; and they ſhould ſhew there was no Violence or Force uſed, that could occaſion the calling this a riotous Aſſembly: That all that was done in the Council-Chamber, was before *Wild* had taken the Oaths by the New Charter; and therefore he could not act by Virtue of that Charter: So that the Information failed in that Particular; where it was charged, that the Aſſembly was duly ſummoned by *Gervas Wild*, then Mayor of the Town, in Purſuance of the New Charter: For, if what was done, was done before he was ſworn Mayor, it could not be an Aſſembly duely ſummoned by him; he having till then no Authority to ſummon it: Nor could what the Defendants had done, be to the Hindrance or Diſturbance of him, in the Exerciſe of his Office; and ſo the Information differed from the Fact the Witneſſes had ſworn: It appeared alſo, that the new Charter bore Date the 28th of *September*; and came down the next Day, being *Michaelmas*-Day, at eleven o' Clock: And they ſhould ſhew in their Proofs, that the Surrender of the Old Charter was not enrolled till the ſeventh of *October* afterwards; and he held, the old Charter could not be determined, till the Surrender was enrolled: As the Old Charter therefore remained in Force, at the Time of the Election, they might well act under it; and if they had neglected to have proceeded to an Election that Day, they had been faulty, according to the old Charter.

The Chief Juſtice demanding, Whether *Malin* was Sheriff, or not: Mr. *Pollexfen* anſwered, He believed he was Sheriff then by the Old Charter. To which the Chief Juſtice replied, What had the Defendants then to do with his Mace?

Mr. *Pollexfen* ſaid, As the Information had charged the Offence to be, in Taking away the Mace from one who was Sheriff by the New Charter, and he was not Sheriff by the New Charter, the Information was faulty.

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The Chief Juſtice demanded again, If it was not true, in Fact, that *Wild* was then Mayor, and met in an Aſſembly, for the Election of a new Mayor? Mr. *Pollexfen* anſwered, That was true; but, they conceived, that would not ſupport the Information: If the Old Charter was in Being, they had done nothing but what they might juſtify by the Old Charter; Mr. *Sacheverell* was a Burgeſs, and might be preſent at an Election.

The Chief Juſtice replied, It was not an Offence, indeed, for a Freeman of *London* to be at the Election of the Mayor: But if a Parcel of Freemen, that were not Liverymen, came, and run themſelves into the Buſineſs, and gave Directions about that they had nothing to do with, crying out, *Stop the Books*; *Deliver the Mace*, and the like; they concerned themſelves, and meddled with an Authority they had nothing to do with; and muſt ſuffer for it: It was never known that Mr. *Sacheverell*, or any other Gentleman, intermeddled with theſe Affairs before.

Another of the Defendants' Counſel ſaid, He conceived *Malin* was not Sheriff; for they had choſen another Sheriff, by the Old Charter, before the Mace was demanded of him; And he was left out by the New Charter; and ſo could not be Sheriff either by the one or the other. The Chief Juſtice demanded, What Authority they had to take the Mace away by Force? Beſides, he obſerved, there was no New Sheriff choſen. The New Sheriff was appointed by the New Charter; and, till that appeared, *Malin* was empowered to act as Sheriff: This Way of Riots, he ſaid, looked like the Times of Uſurpation; when the Rabble met to reform the Government: Let us have no ſuch Doctrines preached here, as the Settling of Governments, and Trying of Rights, by Club-Law: There were legal Courſes to be taken, to try which Charter was in Force: But that was not the Queſtion here; the Defendants were now to anſwer, Why they committed this Riot?

Sir Thomas Parkyns, *Evidence for the Defendants.*

Then the Defendants called their Witneſſes; and firſt, Sir *Thomas Parkyns* depoſed, That he was at the Council-Chamber at *Nottingham*, on the Day of Election; and he ſaw no Diſturbance there: There was ſome Diſcourſe, indeed, of a New Charter, and that they muſt have a Mayor, according to that; and others voted for a new Mayor, according to the Old Charter: And when *Wild*, the old Mayor, ſaw that *Greaves* was like to have a Majority, he roſe up, and went away. He did not oppoſe the Election; neither was there any Proclamation made for any Body to depart; nor did any of the Old-Charter-Men oppoſe the reading the New Charter: He did not hear Mr. *Sacheverell*, or any Body, cry out, No New Charter; or to ſtop the Books; or any Outcries at all made.---He did, indeed, remember, that the Old Mayor went away with two Maces, and one was left behind; and that Mr. *Malin* came back preſently, and demanded it; and ſome ſaid, they had as much Intereſt as *Malin* in it; for they had paid their Shares towards it; but he could not tell who they

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they were: And the Court demanding, if he heard no Noiſe at all? he anſwered, *No, by my Soul, not I:* Which directly contradicting all the Evidence that had been given, the Defendants' Counſel obſerved, Sir *Thomas* was not in the Hall when the Uproar was, but in the Council-Chamber: To which the Chief Juſtice replied, Could he be in the next Room, and not hear the Noiſe?

Thynn's *Evidence.*

Mr. *Thynn* alſo depoſed, That he was in the Council-Chamber on the Day of Election; and he obſerved no manner of Heat, or the leaſt angry Word, or heard any Shout; but, he ſaid, he was a Stranger, and did not much mind what was done.

Pole's *Evidence.*

Mr. *Pole* depoſed, That he was at the Council-chamber, and heard *Wild*, the Mayor, ask Serjeant *Bigland*'s Advice, how to proceed upon the New Charter: Who ſaid, Do you ask my Advice as Recorder, or as Counſel? and gave no other Anſwer: That the Mayor put the like Queſtion to Mr. *Edge*, the Town-Clerk, who gave the ſame Anſwer: After which ſome of the Company ſaid, Let us go to the Poll; and Mr. *Edge* began to take the Poll; and ſome that were for the New Charter gave their Votes: That he ſaw nothing but civil Behaviour from Mr. *Sacheverell*, and the Gentlemen there; but he might hear ſome Noiſe without in the Hall. It being demanded, If he ſaw any thing of the detaining *Malin*'s Mace? he anſwered, Mr. *Malin*, or ſomebody, left a Mace behind him; and when one came for it, a Gentleman of the Council puſhed it from him, and would not let him have it; but he could not be poſitive who it was.

The Court demanding, If he heard any Body ſay, Stop the Books? he anſwered, He thought there was a Diſpute about the Books among the Gownſmen of the Council; but he could not name any particular Perſon.

The Court demanding, If Mr. *Sacheverell* concerned himſelf in the Election? *Pole* anſwered, That the Old-Charter-Men took it, that the Surrender had been ſurreptitiouſly obtained; and he thought Mr. *Sacheverell* might ſay, They had a good Right to inſiſt upon the old Charter: He added, that he did not hear the Proclamation made, for all People to depart that had no Buſineſs there: Whereupon *Reynolds* was called again, and depoſed a ſecond Time, that he made ſuch a Proclamation in the Council-Chamber, by *Wild* the Mayor's Order.

Mr. *Pole* depoſed further, That the great Shout in the Hall was occaſioned by ſending Mr. *Hutchiſon* (mentioned in the Information) to the old Mayor, to acquaint him, Mr. *Greaves* had a Majority, and to deſire him to come and ſwear Mr. *Greaves*.

Ryley's *Evidence.*

Mr. *Ryley*, being called as a Witneſs, depoſed That he was at the Nomination of *Greaves* for Mayor, the 14th of *Auguſt*, according to the Cuſtom; and being ſummoned upon the Clothing on *Michaelmas*-Day, he went to the old Mayor's, then to Church, and from thence to the Council-Chamber, with the Old-Charter Men, where he ſaw *Greaves* ſworn in Mayor: And being asked, If he ever knew the new Mayor ſworn in the Abſence of the old one? He anſwered, No: Nor did he hear any Diſturbance in the Council-Room, or any Proclamation made.

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Muxlow, another of the Clothing, depoſed to the ſame Effect as the laſt Witneſs had done.

The Defendants' called two Witneſſes, who ſaid, They were in the Hall, and heard the Shouting, and confirmed part of the Evidence of the Witneſſes on the other Side; and one of them acknowledged, he ſhouted himſelf, and flouriſhed his Hat in the Hall.

Objections of the Defendants' Counſel on their own Evidence.

Upon this Evidence Mr. *Pollexfen* obſerved, That *Wild* was not ſworn till moſt of the Buſineſs was over; and that, as he could not act till he was ſworn, this could not be ſuch an unlawful Aſſembly as was laid in the Information: He had no Authority to make Proclamation for the People to depart, or do any Thing elſe, till then.

Then *Wild* being called again, and asked, Whether he was ſworn before the Proclamation? anſwered, The firſt Proclamation was made in the Council-Room, before he was ſworn, and the other in the Hall, after he was ſworn.

Whereupon the Defendants' Council obſerved, That the Proclamation made in the Hall could not affect the Gentleman in the Council-Chamber, that did not hear it; and the other was made before *Wild* was ſworn Mayor; and the Information ſuppoſed they continued together, and that all the Facts were done after he was ſworn Mayor by the new Charter; which, upon the Evidence, appeared not to be ſo.

Further Evidence.

After this the Defendants called Serjeant *Bigland* as a Witneſs; who depoſed, that he was in the Council-Room on the Day of the Election, but heard no Noiſe or Diſturbance, or any Proclamation made there: Neither did he hear Mr. *Sacheverell* ſpeak to the Mayor.

Mr. *Edge* being called, depoſed, That he took the Poll; but did not ſwear *Greaves:* That the Gentlemen would have had him to have ſworn him in the Abſence of the Mayor; but he refuſed. And being asked, If Mr. *Sacheverell* was among them all Day? He ſaid, He was.

The Chief Juſtice's Directions to the Jury.

The Lord Chief Juſtice, in his Directions to the Jury, obſerved, That the Defendants inſiſted they could not be guilty of the Riot laid in the Information, becauſe the Mayor was not ſworn, as the Information charged; but it was evident they were guilty of a great Crime; becauſe, till another Mayor was choſen, *Wild* was Mayor. And as to what was ſaid, that *Greaves*, whom they choſe Mayor, was regularly ſworn into that Office, according to the old Charter, they could not ſwear him in the Abſence of the old Mayor; and whoever adminiſtered the Oath to him was guilty of a Crime, as well as he that took it: Nor was there any Occaſion for this Riotous Aſſembly to have inveſted him in this Office, if he was legally choſen: They might have had a *Mandamus*, to admit and ſwear him into his Office. Every Right had a Remedy; and they ought to have taken a lawful Courſe to obtain this Right they pretended to; and he underſtood, there was a *Scire Facias*, and a

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Quo Warranto, depending, in order to determine it: But for Country Gentlemen to buſy themſelves, and come and head the People at thoſe Elections they had nothing to do with, was never practiſed before. Had they been only Spectators, and behaved themſelves quietly, there had, indeed, been no great Matter in it: But the demanding People to be ſworn, calling out to ſtop the Books, and heading the Mob, did not become any Man: The greater the Man, the greater his Influence; and the greater ought to be his Puniſhment. He obſerved, the Tumult was ſo great in the Hall, that the King's Charter was like to have been torn in Pieces; and in the Council-Chamber, they ſeized the Sheriff's Mace, and forced it from him: The People, without any Authority, had choſen a Mayor; that Mayor had aſſembled a Body of all Sorts of People, that committed all Manner of Diſorders, under Pretence of acting by his Authority; which was, in Effect to ſet up a Commonwealth: And had it been on a general Deſign, and not with an Intent to do ſome particular Thing, it had been High-Treaſon.

If People pretended to obtain their Rights in a mutinous Manner in general, that was High-Treaſon; or at leaſt ſo near it, that it would be difficult to diſtinguiſh them: That if ever there was a Riot, this was plainly proved; and though they objected, *Malin* was not Sheriff, he muſt have been Sheriff till another was ſworn; and if he was Sheriff, they could have no Authority to take his Mace from him: Nay, though he was but *de facto* Sheriff, and poſſeſſed of the Enſign of his Office, that was enough; for the Right was not to be determined in ſuch a Way as this.

As to *Wild*, he was Mayor by the Old Charter before he was ſworn on the New one: He had made Proclamation for them to depart, in the Council-Chamber, and then again in the Hall, after he was ſworn; but no Obedience was given either to the old Authority or the new: They grew the more violent, and Mr. *Sacheverell*, and the reſt of the Gentlemen, continued with them to the laſt, requiring the new Mayor might be ſworn, which could not be done in the Abſence of the old Mayor.

Sir *Thomas Parker*, one of the Witneſſes for the Defendants, indeed pretended there was no Noiſe, and ſcarce a Word ſpoken; though their other Witneſſes heard a Noiſe, he heard none: All was a wonderful regular Thing; ſo that the Witneſſes they themſelves called, contradicted each other; and ſuch was the Happineſs of ſome People, that they could not hear if they had no Mind to it: Mr. *Thynn*, another of their Witneſſes, ſaid, he came as a Stranger, and could give no particular Account of the Matter. Others of their Witneſſes did hear a Noiſe, but nothing of the Out-cry, *No new Charter, a* Greaves *Mayor:* But then all the King's Witneſſes had poſitively ſworn theſe Things; and if the Jury did not look upon them all to be perjured, they muſt believe there was a Riot: They did hear, and they did ſee, the Things they teſtified; though the Defendant's Witneſſes pretended, they neither heard or ſaw any Thing of a riotous Nature: And upon the whole concluded, that every one of the Defendants were guilty of the Riot, having been proved every Man to be there, except *Humphry Barker*, whom he directed them to acquit. 1684. 36 Car. II.

The Trial having continued long, the Court broke up, and the Jury afterwards gave in a private Verdict, which they confirmed next Morning in Court, *viz*, That One and Twenty of the Defendants were GUILTY, and the other Defendant, *Humphry Barker*, was not Guilty. *The Defendants convicted.*

The following *Trinity*-Term the Defendants were ſentenced to pay each of them a Fine, *viz. Sacheverell* 500 Marks, *Gregory* 300, *Hutchinſon* 200, *Sherwin*, and three more, 100 Marks each, and none of the reſt more than 20 Marks; and the ſeveral Defendants were ordered to give Security for their good Behaviour for a Year. *Fined.*

The Practices of the Miniſtry in theſe Times, to induce Corporations to ſurrender their Charters by Threats, Bribes, or other corrupt and indirect Means, were certainly very odious, and of dangerous Tendency to the Conſtitution: But then the Way of ſupporting their Privileges and Franchiſes, by Riots and Tumults was not to be ſuffered; at leaſt till they had tried all Legal Ways, and found that Juſtice was denied them in the Courts of Law. *Remarks on the Trial for this Riot.*

As this was a Party Cauſe, we ſee the Witneſſes on both Sides ſwore very home to carry their Point, and even in direct Contradiction to each other: But upon the whole, it ſeems pretty evident, that there was a great Tumult, and that the neighbouring Gentlemen encouraged the Burgeſſes of *Nottingham* to inſiſt on their old Charter, and reject the new one; and as far as they endeavoured this in a legal Way, perhaps they may deſerve Applauſe. But, as the Chief Juſtice obſerved, it would have been of very ill Conſequence to try theſe, or any other Controverſies by Club Law. The Remedy would probably have been worſe than the Diſeaſe. As to Mr. *Sacheverell*'s Obſervation in ſtating his Caſe, *viz.* That the Election ought to be by the whole Body of Burgeſſes. This ſeems to have been given up by both Sides; for in the Election of *Greaves* by the old Charter-men I don't find that any Body was ſuffered to vote but the Aldermen, Sheriffs, Coroners, and 24 Livery-men of the Common-Council. This had been the Cuſtom for many Years paſſed; the Burgeſſes at large had now loſt the Privilege of electing their Mayor, if they had it anciently.

The

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The Trial of JOSEPH HAYES, Citizen of *London*, for *High-Treaſon*, at the *King's-Bench Bar*, 21ſt *November*, in *Michaelmas*-Term. 1684. 36 *Car.* II.

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The Indictment.

THE Indictment charges the ſaid *Joſeph Hayes* with High-Treaſon; for that he, well knowing Sir *Thomas Armſtrong* to be a Traitor, and to have been Out-lawed, and proclaimed guilty of High-Treaſon, in conſpiring the Death of the King, did on the 31ſt of *Auguſt*, in the 35th Year of his Majeſty's Reign, traitorouſly relieve, comfort, and maintain the ſaid Sir *Thomas Armſtrong*, and particularly did aſſign, or pay to him, or for his Uſe, the Sum of 150 *l.* contrary to the Duty of his Allegiance, *&c.*

Peremptory Challenges.

The Priſoner being brought to his Trial the 21ſt of *November*, 1684. Challenged 35 of the Gentlemen returned to try him peremptorily, which was as many as he could challenge by Law; and was ſo fortunate as to have ſeveral of his Party and particular Friends among the Twelve that were ſworn of his Jury, particularly *Sheppard* the Foreman, and *Bellamy*; and there might be more, but I am not acquainted with the Characters of the reſt. The Names of the Twelve that tried him were theſe, *viz. Samuel Sheppard, Daniel Allen, Rowland Platt, Adam Bellamy, Daniel Templeman, William Dewart, Edward Piggott, Thomas Brailesford, Edward Cheek, Edward Underwood, Robert Maſters*, and *William Warren*.

The Jury ſworn.

The Evidence of Everis.

The Indictment againſt Sir *Thomas Armſtrong*, found the 12th of *July* 1683, was then read, with the Proclamation for apprehending him, and declaring him to be a Traitor. After which the Witneſſes were called; and firſt, *Ezekiel Everis* was ſworn, and teſtified, That in the Month of *Auguſt* 1683, he was at *Cleve* in *Germany* with the Lord *Grey*, who went by the Name of *Thomas Holt*; and that Sir *Thomas Armſtrong* who went by the Name of *Henry Lawrence* came thither, and ſhewed him a Bill of Exchange from *England*, drawn upon Mr. *Iſrael Hayes* in *Amſterdam*, for 160 *l.* odd Money, it being for an 150 Guineas paid in *England*; that the Bill was ſigned *Joſeph Hayes*, and accepted; and the Deponent ſaw a Letter from *Iſrael Hayes* to Sir *Thomas Armſtrong* by the Name of *Lawrence*, which mentioned the ſending the ſaid Sum to *Cleve*.

Conſtable's Evidence.

Conſtable, Mr. *Chudley*'s Secretary, being ſworn depoſed, That he was preſent when the Scout of *Leyden* apprehended Sir *Thomas Armſtrong*, and took three Letters out of his Pockets, which the Deponent brought over and delivered to the Lord *Godolphin:* And his Lordſhip being ſworn depoſed, That the three Letters now produced in Court were the ſame Letters he received from Mr. *Conſtable*.

Davis's Evidence.

Charles Davis depoſed, That taking Boat from *Amſterdam* to *Rotterdam*, he met *Iſrael Hayes* and Sir *Thomas Armſtrong* coming to take Boat, and that Sir *Thomas* accompanied him in the Boat, and went by the Name of *Henry Lawrence:* He depoſed further, that he lodged a Month in the Houſe of one Mr. *Briſcoe* in *Amſterdam*, where there was a Club every *Thurſday*, of which Mr. *Iſrael Hayes*, Mr. *Henry Ireton*, Mr. *Wilmore*, Mr. *Dare*, Mr. *Emerton*, and ſome other *Engliſh* Merchants were Members, and he heard them ſeveral Times abuſe the King at Table.

A Letter proved by Walpole.

Then a Letter was produced in Court, ſubſcribed by *Joſeph Hayes*, and dated the 31ſt of *Auguſt* 1683, being directed to Mr. *Lawrence* Senior, at *Amſterdam*; wherein *Hayes* tells Sir *Thomas*, *At your Deſire I have ſent you a Bill*, &c. And Mr. *Walpole* being ſworn depoſed, that he was Servant to Mr. *Joſeph Hayes* four Years and three Quarters; and upon peruſing the Letter, ſaid, he believed it to be his Maſter's Hand.

The Priſoners Hand proved by others.

Harman, a Servant to the *Eaſt-India* Company being ſworn teſtified, That he knew Mr. *Hayes* the Priſoner, and that he had made ſeveral Contracts with that Company, which were entered in their Books; and that he ſaw him ſubſcribe his Name to one of them in *September*, 1683, *Brittle*, another of the Company's Servants alſo depoſed, he ſaw the Priſoner ſet his Hand to the Book; and this, being compared in Court with the Hand in the ſaid Letter, appeared to be the ſame.

Captain *Piercehouſe* alſo produced a Note, which he ſaid was the Priſoner's, and that he paid the Money upon it; and *Walpole* depoſed, that he believed the Note to be his Maſter's the Priſoner's Hand, whereupon this alſo was compared with the Hand in the above-ſaid Letter.

Then another of the Papers taken out of Sir *Thomas Armſtrong*'s Pockets was produced, and Mr. *Conſtable* atteſted it to be the ſame that was taken from Sir *Thomas* by the Scout of *Leyden*.

This was another Letter, ſigned *Joſeph Hayes*, and directed to Sir *Thomas Armſtrong*; but the Contents are not given us.

Atterbury the Meſſenger's Evidence.

Atterbury, the Meſſenger who apprehended the Priſoner, depoſed, That he brought him before his Majeſty, and was preſent when he was examined; and the Letter being ſhewn the Priſoner, the King and the Lord Keeper *North*, preſſed him to ſay whether it was his Hand or not: To which he anſwered, he ſhould ſay nothing to it, if they could prove it upon him well and good. The Chief Juſtice ſaid, that this was true, the Priſoner did not abſolutely deny the Letter; but ſaid he was not bound to accuſe himſelf: He did deny, indeed, that he knew either *Lawrence* or *Armſtrong*.

The Priſoner's Defence

The Priſoner in his Defence ſaid, That *Walpole* his Servant, who was the principal Witneſs againſt him, went away from him in a very odd manner, ſuggeſting that he was governed by Malice or ſome corrupt Motive to appear againſt him; and objected that a Compariſon of Hands, or a Belief that it was his Hand, was no Evidence in a Charge of Treaſon; and held to be no Evidence in ſome Caſes

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Caſes that were not Capital, particularly in the Lady *Carr*'s Caſe.

The Court anſwered, That was a miſtake, he had it from Colonel *Sidney*; but Compariſon of Hands was always allowed to be Evidence, particularly in *Coleman*'s Caſe.

The Priſoner replied, That was a different Caſe; for thoſe Letters were found in *Coleman*'s Cuſtody; but theſe were in the Hands of another Man, and in another Nation. Beſides, here was no other Evidence produced againſt him but the Letter, and that was not two Witneſſes as the Law required: Nor was there any Proof that *he knew* Sir *Thomas Armſtrong* to be guilty of Treaſon, as the Indictment charged, and which only could make his relieving or correſponding with him Criminal: And whether the Outlawry and Proclamation were ſufficient Notice, as was urged, was a Point of Law: To that he deſired Counſel, as well as to that other Point, whether a Similitude of Hands was Evidence in a Charge of High-Treaſon? Nor was there any Evidence but hear-ſay, he obſerved, of any Money paid to Sir *Thomas*. He objected further, that the Indictment was laid for Money paid in *London*, and they would prove the Money paid beyond Sea, which could not maintain the Indictment: That for a Fact done beyond Sea, he could not be tried but according to the 35 *H.* 8. *c.* 2. by ſpecial Commiſſion from the King, and by a Jury of ſuch a County as the King ſhould appoint: To which Point he alſo deſired Counſel.

The Evidence for the Priſoner.

The Chief Juſtice anſwered, This was a fooliſh Crochet. The Priſoner then called Mr. *Sturdivant* as a Witneſs for him; who depoſed, that he had dealt with the Priſoner for ſeveral thouſand Pounds; and being ſhewn the aboveſaid Letter, ſaid, he did not believe it to be the Priſoner's Hand.

The Chief Juſtice ſaid, Every Body knew a Hand might be counterfeited very like.

The Priſoner urged further, That he was not a Man of that Quality to give Sir *Thomas* 150 Guineas.

The Chief Juſtice anſwered, They all knew he had been a very active buſy Fellow about the City; as forward a Spark as any he knew: He did not know his Quality, indeed, but he knew his Qualifications; that he had always been factious and turbulent againſt the King and Government.

The Priſoner proceeded in his Defence, and ſaid, That Mr. *Common Serjeant* had his Books ſeveral Days in his Hands; in which there was an Account of 20,000 *l.* between him and his Brother; but not any Thing of the Name of *Lawrence* to be found; or of any ſuch Sum paid: He acknowledged, indeed, there was an Account of divers Parcels of Money diſburſed in little Sums, amounting to the Sum in the Bill; but he appealed to any Merchant, Whether any ſuch Bill of Exchange was ever paid in ſuch ſmall Parcels as 20 *l.*--- 3 *l.*---10 *s.* *&c.* and the like.

Then the Priſoner called Alderman *Jefferies*, Mr. *Withers*, Mr. *Lloyd*, Mr. *Pellet*, *&c.* to his Character, who all ſaid he was a fair Dealer.

Whereupon the Chief Juſtice demanded, If they had ſeen how active he was, when *Corniſh* and *Bethel*, and ſuch Men, were choſen Sheriffs? And Alderman *Jefferies* anſwered, He could ſay nothing to his Behaviour on thoſe Occaſions.

The Priſoner then applied himſelf to the Jury, and ſaid, He knew nothing of any Conſpiracy; nor had any one of the Conſpirators accuſed him; and begged they would conſider what the Witneſſes had teſtified: That they were not poſitive, but ſwore according to their Belief; neither were there two to any one Point; only *Conſtable* had ſworn the Letter was found againſt Sir *Thomas*'s Papers: And *Everis* only ſaid, he ſaw ſuch a Bill; but did not know the Hand.

Then he uſed the moſt ſolemn Proteſtations, ſaying, I call God, Angels and Men, to witneſs the Truth, as I ſhall anſwer it to him; before whom, for ought I know, I am quickly to appear; I never ſpoke with Sir *Thomas Armſtrong*; or ever was in his Company; or ever wrote to him by the Name of *Lawrence*, or any other Name: And I do ſolemnly ſay, in the Preſence of God, that I never gave, ſent, lent, paid, or ordered to be paid, any Money, directly or indirectly, to Sir *Thomas Armſtrong*, or *Henry Lawrence*, or to him by any other Name, or for his Uſe: I ſpeak it without Counterfeiting or Equivocation.

He added, That Overtures of Life had been made him on certain Terms; and did they think he would riſque his Life, if he could ſave it by ſpeaking the Truth?

Here the Chief Juſtice reprehended him, as endeavouring to caſt a Reflection on the Government; telling him, he muſt not inſinuate that the Government would make Bargains with him.

The Priſoner anſwered, He ſaid no more than that it had been told him, the Way to ſave his Life was to confeſs, and Mr. *Foſter* told him ſo.

The Chief Juſtice replied, He could tell him too of 4 or 5000 *l.* that was offered to let him eſcape.

Then the Priſoner applied himſelf to the Jury again, and ſaid, Gentlemen, I have declared to you the whole Truth, with all the Solemnity that becomes an innocent Man: And you have heard the Evidence; it is nothing but Circumſtance and Hear-ſay: And ſhall a Man's Life be taken away for *I believe*, *I think*, or, *I have heard?* Gentlemen, you are my Fellow-Citizens, and Fellow-Chriſtians; of the ſame Reformed Religion that I am: And I hope you are ſworn into this Service without any Prejudice againſt me, but with an impartial Reſolution to do Juſtice; and therefore I chearfully leave the Matter to you. I am ſure that, if God help me, and deliver me in this Exigency, it is you that under him muſt preſerve my Life. Gentlemen, the great Incertainties, Improbabilities and Conſequences in this Caſe, I hope will be weighed by you. We muſt all die; and I am ſure it will be no Grief to you, when you come to die, that you have acquitted an innocent Man. I leave it with you: The Lord direct you.

The Obſervations the King's Counſel made on the Evidence, and their Reply to the Priſoner's Defence, are wanting in this Trial: And great

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great Part of the Chief Juſtice's Obſervations in his Directions to the Jury are likewiſe wanting; from whence we may conclude, this Trial was taken by ſome of the Priſoner's Friends.

The Chief Juſtice's Directions to the Jury.

If what they have given us be genuine, they make the Chief Juſtice in his Directions to the Jury, ſay, That they were to go according to their Evidence: That the Priſoner's Proteſtations of his Innocence was not to weigh with them: That ſeveral of the Conſpirators had, with as much Solemnity, imprecated the Vengeance of Heaven if they were guilty of any Treaſon: They thought they did God Almighty good Service in that helliſh Conſpiracy. One of the proſcribed Traytors had declared, That they ſhould be ſo far from being eſteemed Traitors, that they ſhould have Trophies ſet up for them; and all this under Pretence of Religion. They were wound up to that Height, as to diſturb the Government, and deſtroy the Foundations of it; to murder his Majeſty, and his Royal Brother; and ſubvert Religion, Liberty and Property, under Pretence of ſerving God. As the Life of this Man was precious, the Life of the King alſo was precious, and the Preſervation of our Religion and Government precious Things; and a due Regard ought to be had for them.

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The Jury withdrawing, returned into Court about two Hours afterwards, and gave in their Verdict, That the Priſoner was NOT GUILTY. *He is acquitted.* Whereupon he was diſcharged: Though Mr. Attorney moved, that the Evidence being ſo ſtrong againſt him, he might be obliged to give Security for his good Behaviour, during Life.

Remarks.

The Priſoner made as good a Defence as could have been expected, from a Man of his Education. No doubt, he found his Account in his ſolem Proteſtations, and his Application to the Jury. He knew there were ſome amongſt them inclined to favour him; and as there was nothing but a Similitude of Hands to convict him, they had ſome Pretence for acquitting him. In every other Caſe, where a Man's Hand-writing had been urged as an Evidence againſt him in former Trials, there were other Overt-Acts proved againſt the Priſoner; and therefore I do not think the Jury did amiſs in acquitting Mr. *Hayes*; though I verily believe he ſent over the Money to Sir *Thomas Armſtrong*, as the Indictment charged.

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Proceedings on the Outlawry againſt JAMES HOLLOWAY, for *High-Treaſon*, in the Court of *King's-Bench*, on *Monday* the 21ſt of *April*, 1684. *Paſch.* 36 *Car.* II.

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Holloway's Outlawry.

The Indictment.

THE Priſoner, *James Holloway* of *London* Merchant, was indicted of High-Treaſon, in compaſſing and imagining the Death of the King; and meeting and conſulting for that End, with *Hone*, *Rumbold*, *Goodenough*, and other falſe Traitors, how to depoſe and murder his Majeſty, and ſubvert the Eſtabliſhed Religion and Government, *&c.*

Outlawry.

For not appearing, and anſwering to which Indictment, the Priſoner was outlawed, and attainted of the ſaid High-Treaſon; but being apprehended, and committed to *Newgate*, he was brought from thence by *Habeas Corpus*, to the Court of *King's-Bench*, to ſhew Cauſe why a Rule ſhould not be made for his Execution: When the Court offered to waive the Outlawry, and admit him to a Trial, if he had any Thing to ſay in his Defence.

He confeſſes his Guilt.

The Priſoner anſwered, he could not undertake to defend himſelf; for he had confeſſed before his Majeſty, that he was guilty of many Things in the Indictment; and he threw himſelf upon the King's Mercy.

The Court replied, That muſt be left to his Majeſty, who was the Diſpenſer of his own Grace; they muſt execute his Juſtice, and give a Rule for the Priſoner's Execution: And a Rule was made accordingly for his Execution on the *Wedneſday* ſev'night following.

A Rule made for his Execution.

The Priſoner's Petition.

After Execution was awarded, *Holloway* preferred a Petition to his Majeſty, wherein he acknowledged himſelf guilty of the Crimes he was charged with, and declares himſelf ſorry for them; imploring that his Majeſty, who was ſo eminent for his merciful Diſpoſition, would grant him his Pardon. However, as he made no Scruple ſtill to cenſure his Majeſty's Adminiſtration pretty freely, he was not deemed a proper Object of the King's Mercy, and therefore was drawn to the Place of Execution at *Tyburn*, on the 26th of *April*, 1684, when he left a Paper with the Sheriffs, *Daniel* and *Daſhwood:* Who demanding of him at the Place of Execution, if it was his own Hand-writing? He anſwered, It is my own Hand-writing.---- A Diſcovery of what I knew, I made to his Majeſty; but a great many People think that I have not diſcovered what I knew: But I have diſcovered what I knew of the Plot, and I am heartily ſorry I was concerned in that Way, as to the endeavouring any Thing by Arms. I do think ſeveral Things have been ill managed in *England*; there have been many Things done againſt the King and the Kingdom's Intereſt; and I wiſh the King was well ſatisfied of it, and that a Courſe might be taken to prevent it. And I think one Way to prevent Plotting (according to my weak Capacity) is, That his Majeſty would be pleaſed to call a Parliament, and paſs an Act of Oblivion for all Plotters whatſoever. There was a damnable Popiſh Plot; and I look upon the ſtifling of that to be the only Cauſe that any Man did any Thing in this. Had all the Popiſh Plotters been----

His Diſcourſe with the Sheriffs at Tyburn.

Sheriff *Daniel.* By the Way, Sir, how do you know it was ſtifled?

Holloway. Sir, we have known that the Laws could not be ſuffered againſt them; and

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the Parliament could not be ſuffered in the Proſecution of them. *I* wiſh the King would conſult his own Safety, and the Safety of the Nation; and that an Act of Oblivion might paſs, for I believe there are many concerned.

Being asked what he knew of the Buſineſs of the *Rye*, for Lopping, or taking off the King and Duke? He ſaid, he looked upon it as a Buſineſs not likely to take Effect; for he could never find above five were concerned in it: That it was carried on by *Rumſey* and *Weſt*; he was not concerned in the Plot till a good while after that was intended to have been done. This Dialogue being ended, and the Priſoner having prayed ſome time, the Executioner did his Office.

He is executed.

His Paper left with the Sheriffs.

The Paper delivered to the Sheriffs was dated April, 26, 1684.

Wherein he ſays,

" To ſtop the Mouths of all Pamphleteers " and News-Scriblers, who have done more " Prejudice to his Majeſty and his King- " doms, by their impudent Endeavours to " ſham all Plots, and to fill the Country with " falſe News, than they will ever be able to " retrieve; and to ſatisfy all I leave behind " me, I thought good to draw up a ſhort " Account of what I knew of the late *Pro-* " *teſtant Plot*, how I came to be concerned, " what induced me to it, and how far I " was concerned; alſo my now Opinion of " it, *&c.*

" About *July*, 1682, I met with a Per- " ſon who then being come from *London*, " gave me a Relation at large, concerning " the Election of Sheriffs that had been in " *June*, the Manner of which is well known " to all; he repreſented it to me as a very " illegal Act; and that there was a deviliſh " Deſign of the Papiſts in it, to cut off the " King's Friends, the ſtirring Men in both " the laſt Parliaments, and the Proſecutors " of the Popiſh Plot, who I always took to " be both the King's and the Nation's Friends. " That there were Witneſſes ready a long " time, to ſwear againſt them, but they could " not get Jurors to believe them; but now " they had, by Force of Arms, *&c.* got " Sheriffs who would find Juries to believe " them, and ſo hang them up at their Plea- " ſure. That there was none but bad Coun- " ſel about the King, who kept all ill Actions " from his Knowledge; and if they proceed- " ed to ſwear *North* and *Rich* at *Michaelmas*, " and to chuſe Lord-Mayor as they had " done Sheriffs, the Proteſtant Gentry were " reſolved (naming ſome) to remedy what " was deſigned, by an Inſurrection in ſeveral " Parts of *England*; and if poſſible, to get " the King off from his evil Council, and " bring all Popiſh Offenders to Juſtice, ſaying, " That they were ſure that, when the King " knew the Occaſion of the Riſing, he would " preſently give up all Offenders, and come " in to them: That it ſhould begin in *No-* " *vember* in *London*, *Briſtol*, *Exeter*, *Taunton*, " *Cheſter*, *York* and *Newcaſtle*; and that we " ſhould hear more of it in a Month's Time; " therefore deſired we might conſider how " it might be managed in *Briſtol*, which we " did; and concluded that *Briſtol*, with " about 350 Men, might be eaſily ſecured " by a Surprize, without the Bloodſhed of " one Man. About a Month after that, " came the Perſon he mentioned we ſhould " hear more by; but he could declare no " more than the former did, only that the " Deſign went on, and there would be timely " Notice given to all Parts; but we heard of " nothing but Diſappointments and Delays, " putting it off from time to time. In *April* " I heard of another Deſign againſt the King " and Duke of *York*, as they were to come " from *Newmarket* ſome time in *March*; but " when I enquired into that, found it was " carried on by three or four; and never " could hear the Names of above five that " were for it. When I heard it, I declared " my Abhorrence of any ſuch thing, and " that I was confident none in our Parts would " be for ſuch a baſe Action. After that, I " enquired farther into it, and could find, " that although it was intended to be done " ſix Weeks before, that they had only a " Parcel of Arms ready, and that they had " neither Men nor Horſes; but one ſaid, if " they could have raiſed 6 or 800 *l.* to have " bought Horſes, and alſo ſomething to en- " courage Men, they ſhould have found Men " enough; ſo that I looked upon that only " to be the Deſign of five or ſix Perſons, and " no way likely to be acted; but the general " Deſign for the Inſurrection was carried on " by others, who, though they had made a " great Stir in the Nation, trying the Incli- " nations of People, and had treated with " the *Scots* and *Iriſh* (as I heard,) who were " to be ready at the ſame Time, yet were " never come to any Reſolution as to any " Time, or Method, before all was diſ- " covered; though they had been eleven " Months contriving it, from the time I firſt " heard of it. This, I hope, will be enough " to ſatisfy all People that there was a Plot; " I mention no Names here, having given his " Majeſty a more large Account of what I " knew of it, mentioning the Names of all " I knew concerned. The Arguments before- " mentioned, with many others to the ſame " Effect, not only ſoon prevailed with me, " but made me indeed think it my Duty to " do what I could for my King and Country's " Safety; being then fully perſuaded, that " not only Popery, but Arbitrary Govern- " ment was intended; not then conſidering, " as I have ſince conſidered, how much Blood- " ſhed it might have cauſed in the Nation; " for then I thought all would have ended in " little time, ſuppoſing Things to be as to " me was reported. But I do now declare my " hearty Sorrow for my yielding thereto, and " acting therein; though I can ſafely ſay, I " was not for taking the King's Life, but " wholly for his Preſervation; yet am ſatis- " fied that it might have cauſed very much " Bloodſhed in the Nation, and I am glad it " did not take Effect. Alſo I declare, that " I am ſatisfied it was a very great Sin againſt " God, not only in diſtruſting his Providence, but

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" but in offering to take the Work out of " his Hand, who knows the Hearts, Thoughts, " and Actions of all, though never ſo ſecret; " whoſe Mercy and Pardon I moſt mumbly " beg, and truſt ſhall have; and in Confi- " dence thereof, through the Merits of the " Blood of our Lord and Saviour Chriſt Jeſus, " can willingly die.

" I have heard that ſome ſhould ſay, I " took up Money at Intereſt to carry on the " Plot, which I diſown; for I never was at " any charge therein, more than common " Expences; nor never heard of any Money " raiſed upon that Account; though I heard " of ten thouſand Pounds that were to be " raiſed for the *Scots*; but ſuppoſe it was " not done.

" When I gave in my Confeſſion, *I ſtood* " *not upon Terms of a Pardon*, being confi- " dent, if Truth would merit Mercy from " the King, I ſhould have his Pardon, and " that it was the only way to gain Mercy " with God. I find already, that People are " paſſing their Cenſures upon me, ſome one " way, and ſome another, for my not plead- " ing and accepting of another Trial, when " it was offered; ſaying, that I confeſſed the " whole Indictment, which I diſown: For I " ſaid thus; What I was guilty of I had con- " feſſed to his Majeſty, and wholly depended " upon his Mercy: Beſides, I had ſome other " Reaſons why I did not plead, which at pre- " ſent I conceal; and alſo why I did not " ſpeak what I intended. More I may ſay at " the Place of Execution, before I leave the " World, which will be according as I find " Things: But as to a Diſcovery of any " more Perſons, I cannot, than has been al- " ready mentioned. Should I mention any " whom I thought would have been con- " cerned, I may much abuſe them, though " I believe many thouſands in the Nation " would have appeared, for the Reaſons " afore-mentioned, which cauſed me to be " concerned. I doubt not, but ſeveral that " were concerned, who are, or may be clear- " ed for want of ſufficient Proof againſt them, " or by his Majeſty's Mercy, will blame me " for confeſſing what I knew, and not much " grieve that I failed of a Pardon, or at my " Death. But I repent not my Confeſſion; " and could I diſcover more, would do it " willingly, though I find no Mercy with " Man.

Remarks on Holloway's Outlawry.

James Holloway was a Merchant of *Briſtol*, a bold enterpriſing Man, and a great Projector: He had engaged in a Deſign of betraying the City of *Briſtol* into the Hands of the Malcontents; and was acquainted alſo with the intended Aſſaſſination at the *Rye*; but ſays, he did not know above five or ſix of the Aſſaſſins; among whom were the two *Rumbolds* (one of them the Owner of the *Rye*, where the Murders were to have been committed.) Some would infer, that this Aſſaſſination was only the Project of four or five daring Villains, becauſe *Holloway* ſays *he knew* but five or ſix of the Aſſaſſins; but from the Trials of the Conſpirators themſelves, there appears to have been a great many more than five concerned in that intended Regicide, and even thoſe of the beſt Quality among the Malcontents. Nor is it any Wonder that *Holloway* ſhould not be acquainted with every one of the Aſſaſſins; Conſpirators do not uſe to communicate ſuch Secrets to many: Beſides, he did not come into the Conſpiracy till that Part of it was dropped, if we may believe him. It is evident from the Trials, that there were ſeveral deſperate Men prepared to execute any Villany their Leaders ſhould put them upon, without asking Queſtions, or knowing when or where the Murders were to be perpetrated, which they were to be concerned in, till the very time of Action. *See the Trial of* Hone, Vol. 3. p. 129.

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Holloway had made his Eſcape twice; and the laſt time got away as far as the *Weſt-Indies*, and yet was diſcovered there, brought back, and executed on the Outlawry that had been proſecuted againſt him in his Abſence. The Reaſon he refuſed to make his Defence when this Favour was offered him, was probably, as he himſelf ſays, becauſe he had before confeſſed enough to hang him, and he hoped, by a free Acknowledgment of his Guilt, to have obtained Mercy; but as he ſeemed to perſiſt in that Opinion, that it was lawful to reſiſt our Governors, and call them to an Account when their Adminiſtration was not acceptable to the People, he was deemed too dangerous a Man to live; as has been hinted already.

I ſhall only obſerve further, That Biſhop *Burnet* was egregiouſly miſtaken, when he ſays, *Holloway* was offered a Pardon; for he himſelf is ſo far from aſſerting any ſuch thing, that he ſays, *He did not inſiſt upon a Pardon; but made his Confeſſion voluntarily.*

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Proceedings on the Outlawry againſt Sir THOMAS ARMSTRONG, for *High-Treaſon*, in the Court of *King*'s-*Bench*, on *Saturday* the 14th of *June*, 1684. *Trin.* 36 *Car.* II.

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Armſtrong.

SIR *Thomas Armſtrong* was taken in *Holland*, and being brought before the Court of *King's-Bench*, by Virtue of a Writ of *Habeas Corpus*, directed to the Keeper of *Newgate*, it appeared he was in Cuſtody of the Keeper of *Newgate*, by a Warrant from the Honourable *Sidney Godolphin*, Eſq; one of his Majeſty's Principal Secretaries of State, and the Return being read and filed, Mr. Attorney Sir *Robert Sawyer*, prayed an Award of Execution upon the Outlawry. Whereupon the Chief Juſtice ordered the Priſoner to be arraigned on the Outlawry; whereby it appear'd, that Sir *Thomas* had been indicted in *London* of High-Treaſon, in conſpiring the Death of the King, and the Subverſion of the

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the Government; and for not appearing and anſwering that Indictment he had been outlawed and attainted of the ſaid Treaſon: It was therefore demanded of him, What he could ſay why Execution ſhould not be awarded upon that Attainder?

Sir Thomas *inſiſts on a Trial.*

Sir *Thomas* anſwered, he was beyond Sea at the Time of the Outlawry, and deſired he might be admitted to a Trial, according to that Clauſe in the Statute of *Edw.* 6 whereby it is provided, That if the Party outlawed, ſhall, within one Year after the Outlawry pronounced, yield himſelf to the Chief Juſtice, and offer to traverſe the Indictment, he ſhall be received to Traverſe it, and if he be found not Guilty, he ſhall be acquitted and diſcharged of the ſaid Outlawry, and of all Penalties, *&c.* as though no ſuch Outlawry had been.

Att. Gen. I ſuppoſe, Sir *Thomas* will now ſhew he yields himſelf to your Lorſhip.

Sir *Thomas Armſtrong.* The Year is not yet out, and therefore I come Time enough now. And here, I am, and deſire the Benefit of this Act.

Anſwered he did not render himſelf voluntarily.

L. C. J. You did not render your ſelf according to that Act, but are brought a Priſoner before us now.

Sir *Thomas Armſtrong.* My Lord, I beg I may have Counſel to plead for me in this Caſe.

L. C. J. For what Reaſon, we are of Opinion, it is not a Matter of any Doubt.

Sir *Thomas Armſtrong.* A little while ago, there was one in this Place had the Benefit of a Trial offered him, if he would accept it.

L. C. J That was the Grace and Mercy of the King, and he may, if he pleaſe, extend the ſame Grace and Favour to you; but that is not our Buſineſs: We are ſatisfied, that according to Law, we muſt award Execution upon this Outlawry.

Mrs. *Matthews.* My Lord, I hope you will not murder my Father, this is murdering a Man.

L. C. J. Who is this Woman? Marſhal, Take her into Cuſtody.

Mrs. *Matthews*, God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon thoſe that are Guilty of High-Treaſon; but Clamours never prevail upon me: I am Clamour Proof, and will never fear to do my Duty.

Then Mr. *Attorney* ſhewed that Sir *Thomas* did not deſerve the ſame Favour that *Holloway* had; for that after the Diſappointment of the Conſpirators by the Fire at *Newmarket*, the Priſoner was one of the Perſons, who actually engaged to go and deſtroy the King upon his coming to Town, as appeared upon full and clear Evidence.

L. C. J We are not to meddle at all with the Evidence, all we have to do, is to conſider of the Record before us; and what the Priſoner ſays againſt our awarding Execution. We have conſidered whether this be a yielding within the Statute; and we think it is not, nor can be, by any Means.

Sir *Thomas* complained, that when he was taken they robbed him, and took all his Money from him, ſo that he had no Money to Fee Counſel; and he knew Lawyers would not plead without Money. 1684. 36 Car. II.

The Chief Juſtice ſaid he knew nothing at all of that Matter, and ordered Execution to be done the *Friday* following.

And accordingly Sir *Thomas* was drawn on a Sledge to *Tyburn*, on *Friday* the 20th of *June*, 1684. of whoſe Behaviour at the Place of Execution we met with the following Account.

His Behaviour at his Execution.

The Sheriffs of *London* and *Middleſex*, about Nine o'Clock in the Morning, coming to *Newgate* and demanding their Priſoner, he was delivered to them, and put into a Sledge, and drawn to the Place of Execution, attended by a numerous Guard, and as great a Number of Spectators, of all Degrees and Qualities, as have been ſeen on ſuch Occaſions. Though he affected an Air of Courage, yet ſomething of Sullenneſs and Reſerve appeared in his Countenance.

He employed the Time he was drawing to *Tyburn* in reading *The Whole Duty of Man*, till he came within Sight of the Gallows, and then he laid it by, and with lifted up Hands and Eyes addreſſed himſelf to Heaven, till he came beneath the Tree, where he remained about a Quarter of an Hour in the Sledge: Before he aſcended the Cart that ſtood ready for him, he deſired the Sheriff to admit Dr. *Tenniſon* to come to him; and having delivered a Paper to the Sheriff, the Doctor kneeled down with the Priſoner, and prayed with him about a Quarter of an Hour, during all which time the Priſoner preſerved a becoming and heroick Countenance, little daunted with the Terror of that Fate he was in view of; but riſing from his Devotions, he pulled off his Cravat and Hat, which he gave to his Servant who attended him, and had followed him by the Sledge-ſide; when kneeling down himſelf, he prayed for a ſhort Time with Fervency and Devotion, begging Pardon of God for thoſe manifold and crying Sins he had been too often guilty of, and concluded with a Reſignation of himſelf to the God of Heaven and Earth, before whoſe Judgment-Seat he was forthwith to appear, deſiring that the whole World would forgive him, with whom he hoped he died in Peace and Charity.

Remarks on Armſtrong's Execution.

In the firſt Volume of Biſhop *Burnet*'s Poſthumous Hiſtory, he informs us, that Sir *Thomas Armſtrong* had been intruſted in every Thing by the Duke of *Monmouth* (which I preſume is meant in relation to the Duke's Conſpiracy againſt the Government) and yet he has ſome Paſſages in that worthy Hiſtory, that would incline a Man to believe both the Duke and Sir *Thomas* were perfectly innocent. The Biſhop adds, that Sir *Thomas* expreſſed ſuch a Dejection of Mind before he made his Eſcape out of *England*, that *Hampden* told him (the Biſhop) That he believed he would do any thing to ſafe his life: However, in his Examination before the Council, he denied he knew of any Plot but the

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the *Popiſh* Plot, and only deſired he might have a fair Trial. The Biſhop tells us alſo, that he was loaded with Irons, which was not uſual for a Perſon of his Quality, having been Lieutenant of the Guards, and Gentlemen of the Horſe to the King. But the Credit of the Witneſſes was ſo blaſted, that the Court was apprehenſive a Jury would not credit them; and therefore ordered *Armſtrong* to be executed on the Outlawry, and would not ſuffer him to have the Advantage of a Trial, though the Statute allowed it to any one that came in within the Year: (But the Biſhop is ſo good as to remember that the Court told him, *That he did not come in voluntarily, but was brought in by Force.)*

The Biſhop goes on, and ſays, In the Paper *Armſtrong* left behind him at his Execution, he denied he ever knew of a Deſign againſt the King's, or the Duke's Life; *or was in any Plot againſt the Government:* And the Court ordered no Reflections ſhould be made upon his Speech on Account of a Paſſage in it, wherein he denied his being ſent over by *Cromwell*, to murder the King during his Exile, as the King had reported to the Foreign Miniſters and others. The Biſhop relates alſo, That he ſaw a Paper, wherein *Armſtrong* expreſſed his Reſentments in a ſharper Manner than he (the Biſhop) thought became a dying Penitent; which being repreſented to *Armſtrong*, he ſoftened it much: Though he ſhewed he never went but once beyond Sea, and then carried a conſiderable Preſent of Money to the King, and brought back Letters of Thanks from his Majeſty; and from this, *Cromwell* impriſoned him almoſt a Year, upon the Merit of which, he was advanced to the Poſt of Captain of the Horſe at the Reſtoration.

But as to the Reaſon the Biſhop gives for not admitting *Armſtrong* to a Trial, namely, becauſe a Jury would not Credit the Witneſſes againſt him; this agrees very ill with what the Biſhop aſſerted but juſt before, *viz.* That Juries would at this Time find any Thing they were directed to find, whether there was Evidence of the Facts or not: And as to that Clauſe he mentioned in *Armſtrong*'s Paper, *That he knew of no Deſign againſt the Government*; This may eaſily be accounted for, inaſmuch as the Conſpirators pretended all their Deſigns were for the Support and Eſtabliſhment of the Government, and to prevent the Subverſion of it. And, as the Biſhop confeſſes, he had the Peruſal and Alteration of the Speech, if he had not the entire modelling of it, we are not to wonder at the equivocal Expreſſions in it. The Fact ſeems now to be pretty well ſettled: All the Diſpute at preſent is, Whether Sir *Thomas*, and his Accomplices, ought to be looked upon as Traitors; or ought to have Statues erected to their Memories, as Patriots and Champions of their Country's Liberties, as the celebrated *Ferguſon* told them they ought?

Dr. *Sprat*, Biſhop of *Rocheſter*, who wrote the Hiſtory of the *Rye-houſe* Plot, ſays, That the King could not think himſelf in the leaſt bound to go out of the way of the Law, by ſhewing any diſtinguiſhing Act of Grace to *Armſtrong*; eſpecially ſince it was manifeſt there was ſcarce a Man living, who had more Perſonal Obligations to his Majeſty than he had, and yet no Man had made more ungrateful Returns for them than he had done: Nor could his Majeſty forget how many other Perſons, and ſome very near his Majeſty, Sir *Thomas Armſtrong* had been the chief Inſtrument of perverting: Upon which Account his Majeſty had Reaſon to look on him as the Author of many more Treaſons beſides his own.

The Execution of a Writ of Enquiry between his Royal Highneſs JAMES Duke of *York* and *Albany*, and TITUS OATES, Clerk, in the Court of *King's-Bench*, on *June* 18, 1684. *Trin.* 36 *Car.* II.

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The Duke of York *againſt* Titus Oates. *The Declaration.*

THIS was an Action of Treſpaſs and Contempt grounded upon the Statute *de Scandalis Magnatum*, wherein his Royal Highneſs ſet forth, That whereas the ſaid Statute prohibited the ſlandering the great Men and Peers of the Realm, and that the Plaintiff being the King's only Brother, and a Peer, the Defendant, in Diſcourſe between him and ſome other Perſons about a Letter the Defendant then had in his Hands, ſaid, *This Letter coſt me nine Pence, and might have been brought for a Penny; I know no body the better for it, but that Traitor* James *Duke of* York. And at another Time ſaid, before a great deal of Company, *That the Duke of* York *was a Traitor:* Which Words were laid to be to the Plaintiff's Damage one hundred thouſand Pounds. The Defendant not pleading to the Declaration, the Plaintiff ſigned Judgment; and a Writ of Enquiry was taken out, directed to the Sheriffs of *Middleſex*, to enquire, by a Jury of that County, what Damages the Plaintiff had ſuſtained; and upon a Motion made in the Court of *King's-Bench*, a Day was given to the Defendant to ſhew Cauſe why the Writ of Enquiry ſhould not be executed at the Bar of that Court; and no Cauſe being ſhewn to the contrary, Sir *Peter Daniel*, Kt. and *Samuel Daſhwood*, Eſq; the then Sheriffs of *Middleſex*, came into Court at the Day appointed, and being placed at the Table at the Judges Feet, were covered during the Execution of the Writ.

Judgment by Default.

A Writ of Enquiry executed.

Sir *Charles Lee*, three other Knights, ten Eſquires, and one Gentleman, in all fifteen, being ſworn of the Jury, Mr. *Thomas Rouſe*, the Under-Sheriff, read the Writ of Enquiry in *Engliſh* to them, and informed them, That they were to enquire what Damages his Royal Highneſs the Plaintiff had ſuſtained, by means of the aboveſaid Words; as alſo what Coſts he had been at in this Suit.

15 *on the Jury.*

Then the King's Counſel opened the Declaration, and obſerved, That the Words

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were confeſſed by the Defendant's Default in not pleading, and that they were only to enquire of the Damages: However, they ſhould produce Witneſſes to prove the Words, and to ſhew that this was the conſtant Tenour of his Diſcourſe, inveighing againſt the Government in all Companies, and particularly againſt his Royal Highneſs the Plaintiff.

The Evidence.

Witneſſes being called, Mr. *Smith* depoſed, That he heard the Defendant ſay in a publick Coffee-houſe, *This Letter coſt me nine Pence; it might have been brought for a Penny; I know no body is the better for it but a Traitor*; and to the beſt of his Remembrance he ſaid, *The Duke of* York.

Mr. *Penniſton Whaley* being ſworn, depoſed as follows:

Whaley. I was at the Biſhop of *Ely*'s Table at *Ely*-Houſe, either the *Eaſter* or *Whit-ſunday* after Sir *Thomas Gaſcoigne*'s Trial. I had received the Sacrament at the Chapel there that Day, and ſo had Dr. *Oates*. And ſome Diſcourſe happening at the Table about Sir *Thomas Gaſcoigne*'s Trial, *Oates* fell foul upon the Jury, and ſaid, *They are a Company of profligate Villains*, and *He would have them attainted.* I ſaid, Doctor, you are a good Man at a Matter of Fact, but I doubt you are not ſo at a Matter of Law. Then we came to high Words, and among other Things he ſaid, *The Duke of* York *was a Traitor.* I ſaid, Doctor, you lie under a great Error, I ſuppoſe by miſtaking a Statute made againſt Popery: Says he, *No matter for that; I ſay he is a Traitor.* And both of us growing pretty warm, he called his two Men, that uſed to follow him up and down, to his Aſſiſtance. I ſaid, there is no body to hurt you: Do you think that the Biſhop of *Ely*'s Table is not a Protection for any body that comes here?

L. C. J. Was the Biſhop at the Table then?

Whaley. He was at the Table, but a great Diſtance from us; the Doctor and I ſat at the lower end of the Table. Afterwards I begged the Biſhop of *Ely*'s Pardon, for being ſo hot and loud at his Table: Says the Biſhop, I thank you kindly for it; none of us dare talk with him.

Edward Johnſon was ſworn.

He depoſed, that meeting *Oates* the 23d of *Auguſt* 1680. the Deponent ſaid, All things will go well now, for there is a Parliament to meet in a little Time; and *Oates* anſwered, *No, not till* York *be baniſhed or hanged. He has a good Brother, but he takes all the Courſes in the World to undo him.*

Randall Bowring was ſworn.

He depoſed, in *October* 1679, he was at dinner with *Oates*, at his Lodgings at *Whitehall*, and a Gentleman ſaying in caſe his Royal Highneſs were a Papiſt, how ſhould we be ſecured, in caſe he came to the Crown, that he would not bring in Popery? The Doctor replied, *I would not have you trouble your ſelf about that; for he ſhall be hanged before that Time.* That at another Time *Oates* having preached in *Foſter-lane*, the Church-Warden invited him to Dinner. He asked, *If any of them had dined with* James *D. of* York, *at any of the Feaſts in the City, when the Duke uſed to come ſometimes*; and none of them anſwered him. *Oates* replied, *He would not dine with any Man that had eat with the Devil:* And ſo went and dined with a Brazier at *London-wall.*

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Mr. *Fairfax* was ſworn.

He depoſed, That in my Lord Chief Juſtice *Scrogg*'s Time, there was a Preſentment to be brought in by the Grand Jury againſt his Royal Highneſs for being a Papiſt, and not coming to Church; and that this *Oates* was the main Proſecutor of it. That the Grand Jury being diſmiſſed, the Deponent told *Oates*, that now he was diſappointed; and *Oates* replied, *Oh, we will do well enough; there will be a Seſſions after the Term, and there we will at him again; and we will have no more Regard for him than if he were a Scavenger of* Kent-ſtreet.

Mr. *Philips* was ſworn.

He depoſed, That in *January* 1678, he was at *Oates*'s Lodgings in *Whitehall*, and *Oates* ſaid, *He hoped to ſee our Maſter* James, meaning the Duke of *York*, *at the Bar of the Houſe of Commons; and it would be no Diſparagement to him to appear there, for there were better Men Members of that Houſe than he was.*

William Aſhlock was ſworn.

He depoſed, That as *Oates* was dreſſing one Morning in *Eaſter*-Term 1682, *Oates* ſaid He was going out to draw up a Bill of Indictment againſt the Duke of *York*; but the Deponent heard afterwards he was otherwiſe adviſed. That he ſaid alſo, The City of *London* was fired by the Duke of *York*'s Order; and the Forces at *Blackheath* were to have plundered the City, and killed all the honeſt Proteſtant Diſſenters there; and the Duke of *York* was to have headed thoſe Forces; and this he would prove, if ever they could get a Parliament to their Mind. And he ſaid, They ſhould take away the Poſt-Office from the Duke of *York*, and give it to the Duke of *Monmouth.*

That at another Time he ſaid in Company, *The Duke of* York *was a Son of a Whore, and he ſhould live to ſee him hanged; and if they could but get a Parliament to their Mind, they would ſoon ſend the Duke and all his Gang out of* England; *for he muſt never expect to ſucceed to the Crown.*

Capt. *Creſſet* was ſworn.

That as he was waiting one Morning at the Duke's Lodgings, *Oates* ſaid to him, *You will never leave, till you have loſt your Reputation: You have been with* James (York, *I mean:) He is a Raſcal, a Papiſt, and a Traitor, and I hope to live to ſee him hanged.*

Sir *William Jennings* was ſworn.

He depoſed, That being at a Tavern at *Oxford* with *Oates*, when the Parliament ſat there, and the Duke's Health being propoſed, *Oates* ſaid, *Do not drink* York's *Health: He has ruined the Nation; and if the Devil has a Place in Hell more hot than others, I hope he will beſtow it upon him.*

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Mr. *Warcop* was ſworn.

He depoſed, That meeting *Oates* afterwards, and reproving him for the laſt recited Expreſſions, he anſwered, *The Duke was a Traitor, and in the Plot:* and told the Deponent, *He was a* Yorkiſt, *and he would remember him for it.*

Mr. *Charles Chapman* was ſworn.

He depoſed, That he went along with Mr. *Swift*, the Duke's Attorney, when he went to the Defendant *Oates* to demand a Plea: That *Oates* asked Mr. *Swift*, If he were the Duke's Attorney? And *Swift* anſwering, Yes; *Oates* ſaid, *He did not value the Duke, nor his Attorney neither; he would plead as he ſhould ſee Cauſe; and that he neither loved the Duke nor feared him. That, may be, he might be in the* King's Bench *for* 100,000 l. *But if ever a Parliament ſat, he did not queſtion but to have ſome body elſe in his Place.*

No body appearing for the Defendant *Oates*, my Lord Chief Juſtice ſaid,

L. C. J. Gentlemen of the Jury, it is not your Buſineſs to enquire whether *Oates* ſpoke theſe Words; for by letting Judgment go againſt him by Default, he doth in Law confeſs the Words; but you are to enquire what Damages are fit to be given to the Plaintiff, by reaſon of theſe Words. Yet inaſmuch as this is a Caſe of an extraordinary Nature, Weight and Moment, having Relation to ſo great a Prince, His Royal Highneſs, the King's only Brother, it requires this extraordinary Solemnity; it not having been uſual heretofore to have Writs of Enquiry executed at this Bar. But the Occaſion is extraordinary, ſuch as has not happened before this Age, this corrupt, this profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the factious Party, have taken the Liberty to reproach and calumniate Magiſtracy and Government, and the greateſt Perſonages concerned in it; not ſparing even Majeſty it ſelf, nor him who is next in Degree to his ſacred Perſon, his only dear and Royal Brother. And therefore, as the Caſe is extraordinary in its Nature, ſo ought the Example of it to be made as publick as can be, in order to ſatisfy all People what a Sort of Fellow this Defendant is, who has been ſo much adored, and looked upon with an Eye of Admiration, courted with ſo wonderful an Affection, and ſo, I had almoſt ſaid, *Hoſanna'd* by the Factious. Such as he ought to be made publick Examples of; and therefore the King's Counſel have deſired that this Cauſe might be here canvaſſed at the Bar; and that the Defendant, as he has made himſelf eminent for ſome particular Qualifications, might be made a publick Example for this Offence.

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Thus the Writ comes to be executed here. Now though the Words laid in this Declaration, are Words that do import in themſelves, ſo much Scandal and Reproach, ſo much Malice and Venom, that they need no Aggravation; and his ſuffering Judgment to go by Default ſhews they are no Way to be extenuated: Yet, however, to ſatisfy all People that have any Inclination to be ſatisfied, that this Proſecution is highly reaſonable, nay, abſolutely neceſſary; they come here, and give you an Account, that theſe in the Declaration are but a ſmall Part of the ſcandalous and malicious Words that the Defendant had uſed concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is intended with all the moſt unchriſtian and uncharitable, as well as diſloyal and diſobedient Circumſtances, that any Thing can be; with Deſign to traduce and diſparage a Subject ſo Loyal, and a Perſon ſo Great and Illuſtrious as his Royal Highneſs.

Then the Chief Juſtice having ſummed up the Evidence, the Under-Sheriff ſaid, Gentlemen, Lay your Heads together, and conſider of your Verdict.

Which they did, ſtanding at the Bar.

Under-Sheriff. What Damages do you find?

Sir *Charles Lee.* Full Damages, an hundred thouſand Pounds, and twenty Shillings Coſts.

Which Verdict being recorded in an Inquiſition indented, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Enquiry; and the Priſoner was committed in Execution to the *King's Bench* Priſon for Non-payment of the Damages, where he remained till he was convicted of Perjury in the next Reign, and then he was remanded to the ſame Priſon again.

Remarks.

His Offence in reviling the Duke of *York*, the Preſumptive Heir of the Crown, was certainly a very great one; but the giving ſuch Damages as the Defendant could never poſſibly pay, was in Effect to condemn him to perpetual Impriſonment, and render him incapable of getting his Bread, which has been juſtly cenſured: And it is preſumed the Precedent will not be followed, eſpecially by that Party who uſed to exclaim moſt loudly againſt ſuch rigorous Judgments, as being a Breach of *Magna Charta*, and conſequently illegal.

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The Trial between Sir WILLIAM PRITCHARD, late Lord Mayor of *London*, Plaintiff, and THOMAS PAPILLON, Eſq; Defendant, at *Guild-hall, London, Nov.* 6, 1684. 36 *Car.* II.

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Pritchard *and* Papillon. *The Declaration.*

THE Plaintiff, Sir *William Pritchard*, declared, That whereas on the 12th of *February*, in the 35th Year of the King, he was Mayor of the City of *London*, the Defendant *Thomas Papillon*, being one of the Commonalty of the ſaid City, and under the Government of the Plaintiff, malicioufly contriving to diſturb him in the Execution of his ſaid Office, did on the ſaid 12th of *February*, in order to vex the Plaintiff, and without any probable Cauſe of Action, take out a Writ againſt the Plaintiff, and cauſe him to be

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be arreſted and detained in Cuſtody for the Space of ſix Hours, on the 24th of *April* following, to the Plaintiff's Damage 10,000 *l.*

Mr. Attorney General in opening the Evidence, ſaid, This Action was brought to vindicate the Honour of the Chair from ſuch Affronts as it never had met with, till theſe Times of Faction and Confuſion: That the Defendant had no probable Cauſe for the Action he brought againſt the Lord Mayor was evident by his not proceeding in the Action; but there was a further Deſign in that Proſecution, namely, to carry on the Plot againſt the King's Life, and to ſubvert the Government; for the Faction had contrived to impriſon the Mayor, ſuppoſing that the Loyal Citizens would have attempted his Reſcue, and then their Party deſigned to riſe and aſſiſt the Officer that arreſted him, he having the Countenance of Authority, as being in the Execution of the King's Writ, and ſo a publick Commotion would have been made; and in that Confuſion, while the City wanted a Head, they expected they ſhould have had an Opportunity of accompliſhing what the Conſpirators intended.

The Evidence.

The Witneſſes being called, *Keeling* was ſworn, and depoſed, That he was made a ſpecial Bailiff on purpoſe to arreſt the Lord Mayor, and that he did arreſt him accordingly. *Goodenough*, the Under-Sheriff, telling this Witneſs, The Party would take it amiſs if he refuſed to do it; and that thirty or forty of the Party were by, when he received his Directions to arreſt the Lord Mayor.

Sir *John Peak* depoſed, That there being ſome Diſturbance on the arreſting of the Lord Mayor, he had Orders from the Lieutenancy to raiſe his Regiment, and that he came with his Soldiers to *Skinners-Hall*, where he heard the Lord Mayor was, and prevented the Miſchief that was intended.

Mr. *Wells*, the Common Cryer depoſed, That *Brown* the Coroner cauſed the Lord-Mayor to be arreſted and carried to his Houſe, where he was detained in Cuſtody ſome Hours, on his refuſing to give an Appearance: *(It ſeems, The Militia being raiſed, and coming to his Lordſhip's Reſcue, the Party thought fit to releaſe his Lordſhip.)*

Papillon's Defence by his Counſel.

Mr. Serjeant *Maynard*, being of Counſel for Mr. *Papillon*, ſaid in his Defence: This is an Action upon the Caſe, wherein the Plaintiff declares, That the Defendant did arreſt him, being then Lord Mayor, without any probable Cauſe, and out of Malice. Now my Lord Mayor, if he do miſtake in his Office, and do not do that which belongs to him to do; if he does any Man an Injury, or does that which is not right in his Office, by which another Perſon is grieved, he is as much ſubject to Actions, and to the Proceſs of Law, as any private Man in the City of *London*; and if we can give you any Account of a probable Cauſe for the Arreſt, that is ſufficient to juſtify us from this Action. The Queſtion is not, whether this or that Man were duly choſen into ſuch an Office? but whether there were any probable Cauſe for the Defendant to conteſt about the Choice? And here the Caſe falls out to be thus: There was a Difference in the City of *London* about the Choice of Sheriffs, wherein the Defendant was one of the Competitors, and had many Suffrages, and was returned by the Sheriffs to the Court of Aldermen to have a Majority, which gave him Occaſion to apprehend he was rightly choſen: Now though we inſiſt not upon the Right of Election (that having been otherwiſe determined), yet this ſurely was a probable Cauſe for him to proceed upon it; and he having no other Method to take, for ſettling this Matter, but to appeal to your Lordſhip, and that great Court where your Lordſhip ſits, to have a Writ to command the Mayor to ſwear him into the Office, or ſhew good Cauſe why he did not; accordingly a *Mandamus* was moved for and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not elected Sheriff of *London*; which Return we apprehended to be falſe, and to try the Truth of this Return, was the Action brought againſt the Plaintiff, and not to promote the Deſigns of a diſcontented Party, as has been inſinuated: Upon this Action the Defendant proceeded regularly and orderly, applying himſelf in a decent Manner to get an Appearance: For firſt, we took out a *Latitat* againſt my Lord Mayor, and by the Attorney gave him Notice of it, and deſired an Appearance, but he was not pleaſed to give an Appearance upon that Writ: We took out a *Capias*, and gave him Notice of it, but could have no Appearance: Whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration; to which my Lord refuſing to give an Appearance, the Officer was conſtrained to arreſt him. This was nothing but what the then Plaintiff apprehended he might lawfully do, and no Malice or ill Deſign is proved upon him: And I hope it will never come to that, That a Man (though miſtaken) conceiving himſelf to have a Right of Action, and ſuing out the King's Writ, ſhall ſuffer for ſo doing, unleſs particular Damage be made appear. Here is a great Noiſe of Damage and Diſgrace to the Plaintiff and his Office, and he has been pleaſed to reckon his own Damages 10,000 *l.* But we ſay he has ſuſtained no Damage by any Thing we have done, and we are not Guilty of this unreaſonable and malicious Proſecution laid to our Charge.

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The Defendant's Witneſſes.

Then *Brome* the Coroner, who granted the Warrant for arreſting the Lord Mayor, was called as a Witneſs for the Defendant, and depoſed, That he ſeveral Times deſired an Appearance of his Lordſhip, but he refuſed to give any, whereupon he was arreſted, and he carried his Lordſhip to his (the Deponent's) Houſe: And it being demanded, how he came to releaſe his Lordſhip, he anſwered; he was taken into Cuſtody himſelf; and ſaid, he had Directions from his Clients to uſe his Lordſhip with all the Reſpect imaginable, and he punctually obeyed their Orders.

Mr. *Corniſh* and ſeveral other Witneſſes being called, they confirmed *Brome*'s Teſtimony: But Mr. *Corniſh* prevaricating in ſome of his Anſwers, the Chief Juſtice ſaid, You

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must not think to dance in a Net and blind all the World: I know theſe Things very well without their Aſſiſtance, and only ask theſe Queſtions to let the World know what Sort of Men theſe are that pretend to Saintſhip: You ſee we can hardly get one Word of Truth out of them; neither *Bethell*, nor that Fellow *Corniſh* would take the Oaths and Sacrament according to Law, till they found it would contribute to their Deſign of ſubverting the Government: Then theſe Raſcals could qualify themſelves for an Office, only to put the Kingdom into a Flame.

Then ſome other Witneſſes depoſed, That Mr. *Papillon*, and Mr. *Dubois* had a Majority at the Poll for Sheriffs.

To this, the Attorney-General anſwered, That the Poll taken by the Sheriffs was done in an unlawful and riotous Manner, and by thoſe who had no Power to take it; and called the Town-Clerk as a Witneſs for the Plaintiff, who depoſed, That Sir *Dudley North* and Mr. *Box*, were duly elected Sheriffs, *An.* 1682. and that the Sheriffs were not Judges of the Poll.

Obſervations on the Evidence by the Defendant's Counſel.

The Evidence being cloſed, Mr. Serjeant *Maynard* made his Obſervations on it, and ſaid, It is nothing to the Purpoſe, who took thePoll, or who had a Right to take the Poll; but it was a Diſpute, and ſome, it may be, could not poll at one Place, and others would not poll at the other, yet the lifting up of two Thouſand Hands might make the Defendant think he was choſen Sheriff; and there lies the Cauſe of his Action, his Apprehenſion of a Right. And though it may be objected to the Prudence of my Client, to deſire ſuch an Office, yet that proves nothing of Malice in him againſt the Plaintiff. And as to the Objection to the Inſtrument we made Uſe of, that our Attorney was in a Plot, *&c.* what is that to us? There is not the leaſt Suſpicion upon us; though he is a bad Man, that doth not make all his Clients bad. Now, Gentlemen, upon this Action we are not to be fined: But they, if they can, are to ſhew what Damages the Plaintiff ſuſtained by our Action: And if what we have ſaid do not ſatisfy you, that we had probable Reaſon for what we did, then you upon your Oaths are to give him what Damages you in your Conſciences think he has received by it: After which the Chief Juſtice directed the Jury, and ſaid,

The Chief Juſtice's Directions to the Jury.

Gentlemen of the Jury, The Point of this Action before us reſolves it ſelf into a very narrow Compaſs, and is only this in ſhort: Whether or no the Plaintiff was arreſted by the Defendant without probable Cauſe, and maliciouſly. Now Matters of Malice are Things that remain in a Man's Heart, and it is impoſſible to diſcover whether another Man hath Malice againſt me, if I do not ſee it in his Actions. Therefore you muſt conſider the Circumſtances that do attend this Action; if they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumſtances that can convince you that he had any probable Cauſe of Action, and that not attended with a malicious Proſecution of that probable Cauſe; then the Iſſue is with the Defendant. Now, in point of Law, I am to tell you, that though I have a probable Cauſe of Action againſt another; yet if, to obtain my End in that, I proſecute him maliciouſly, with a Deſign to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick; or put an Hardſhip or Difficulty upon him, I mean in Point of Time, when it is probable the Remedy may be had at another Time; and the ſame Thing done with leſs Injury and leſs Trouble, then an Action will lie againſt me; though it be true, I had a conjectural Cauſe of Action againſt him. The purſuing malicious Ways to obtain a Right, makes a Man obnoxious to the Action of the Party ſo proſecuted.

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But as to their probable Cauſe, Suppoſe it were a Queſtion between me and *John-a-Stiles*, for the Place of Bridge-maſter, for the Purpoſe, and a Poll is demanded and granted; if they that have no Authority ſhall go, after the Court is adjourned by him that has Power, and take a Number of Names in the Way of a Poll, by themſelves, and upon that come and ſay, that *J. S.* has 2400, and I have but ſo many, that ſure is not any probable Cauſe, nor a Right: For you have gone here out of the known and uſual Method in ſuch Matters, and depend upon that which can give no Foundation of a Right at all: You may have 50000 Names for you after that Rate, and yet not be elected, or have probable Cauſe of any ſuch Apprehenſion.

But Gentlemen, to bring an Action alone, will ſcarce mount to a Proof of Malice; therefore you muſt weigh the Evidence whether the Circumſtances do ſhew there was any Malice in Mr. *Papillon*. It is true, a Man may lawfully ſue for ſuch an Office, and it is no Offence; yet it looks ſomewhat extraordinary, and that a Man has a Mind to do ſomething unuſual in the Place, that he ſhould ſue for it; eſpecially when he had fined for the Office once before. My Lord Mayor of *London*, it is true, is not, nor no Perſon whatever, exempt from the Law: If he owe a Man any Thing he is bound to anſwer it to him, as much as the meaneſt Citizen: But is he to be arreſted juſt at ſuch a Time, when he is chief Governor of the City? And the Court of Aldermen too, becauſe they are his Aſſiſtants? And at ſuch a Time as this was, when the Government, both in the City and elſewhere, was ſurrounded with Difficulties, and in great Danger on all Sides? What Occaſion was there for ſuch Haſte in this Action? Would Mr. *Papillon* and Mr. *Dubois* have ſtarved, if it had been ſuſpended a while? Sir *William Pritchard* would have been as anſwerable to his, or any Man's Action, when the Year of his Office had been out: But it carries Malice and Vengeance in the very Face of it. And becauſe they would be ſure their Malice and Revenge ſhould take Place, they take the very Scoundrels of the Party to be employed in this great Work; the *Goodenoughs*, *Burleigh*, *Keeling*, and *Nelthorp*, who now ſtand attainted of High-Treaſon, muſt be called in to conſult about a fit Man to make an Arreſt. It is plain, Gentlemen, what the Deſign was,

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from the Beginning to the End; nothing but to cauſe a Tumult and Confuſion in the City, in order to put that damned helliſh Conſpiracy, for the Deſtruction of the King and his Brother, and every Man that was honeſt and loyal, in Execution. Another Circumſtance, which is conſiderable in this Caſe, is the particular Perſons that were ſued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen in general; and the Return was made in the Name of the whole Court. How comes it then, that my Lord Mayor, Sir *Henry Tulſe*, and thoſe other Gentlemen, muſt be arreſted; but Mr. *Corniſh*, and his Party, are not meddled with? This is a Circumſtance that carries Malice in it.

Gentlemen, as to the Damages, if you find for the Plaintiff, it is left to your Judgments to conſider of, and give what you ſhall think fit, upon this Occaſion. It is true, it is not eaſy to aſcertain particular Damages in ſuch a Caſe; or to prove that Sir *William Pritchard*, being in Priſon five or ſix Hours, ſuffered ſo much Damages as comes to 10,000 *l.* Yet, however, if the Thing for which the Action is brought, were deſigned with Malice, though the ill Deſign be not effected, that is no Thanks to the Party, nor is to weigh with you; but the malicious Deſign muſt govern you. Now the Malice here, was not againſt Sir *William Pritchard*, as ſuch a particular Man, but againſt my Lord Mayor; and the Government of the City, the Honour of your Chief Magiſtrate, and indeed the Honour of your King, whoſe Subſtitute he was, is concerned; and that puts a Weight upon your Enquiry into the Damages of this Caſe. You are to conſider, you give Damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your Severity in this Caſe, will deter all People from entering into Clans and Cabals, to make Diſturbances, and affront the Government.

It was not, I dare ſay, out of a frank, generous Humour, to oblige the City, that Mr. *Papillon* would have ſpent his Time and Money in the Office of Sheriff: No, I know he had better Ways to employ both.

It was not the generous Mind of Mr. *Bethel*, that called him on to be Sheriff of *London*, to entitle him to ſpend his Money; but on Purpoſe to be one of the firſt that ſhould turn all Things upſide down in the City, and diſturb the Government: And they that ſucceeded him, carried on the Project; and they that would have been in, but could not, had a Mind, no doubt, to follow ſo worſhipful an Example as he laid before them.

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Then the Jury withdrew, and after half an Hour's Stay, returned with a Verdict for the Plaintiff, and aſſeſſed Damages to 10,000 *l.* and Coſts to four Marks.

Remarks.

It appears, that many of the Conſpirators, who were in the Plot againſt the King and Government, were concerned in contriving and promoting this Action againſt the Lord Mayor. *Goodenough*, the Attorney, was deep in the intended Aſſaſſination: *Brome*, the Coroner, who granted the Warrant, was a Conſpirator: *Keeling*, who was made a Special Bayliff, on purpoſe to arreſt the Lord Mayor, was one of the intended Aſſaſſins; and the Plaintiffs, and the reſt of the Citizens that aſſembled to direct the Affair, were known Malcontents, and probably equally concerned in the Conſpiracy, though not ſo openly:

And if this be admitted, it cannot remain a Doubt, whether one principal View in arreſting the Lord Mayor, was not in hopes of creating ſome Confuſion in the City, and thereby to favour the intended Inſurrection; though another Reaſon poſſibly might be, to gratify their Spleen in diſgracing the Lord Mayor, who was a loyal Citizen, and well-affected to his Majeſty. They would ſhew the Government, they were not afraid to inſult the Chief Magiſtrate of the City, and in him the King himſelf, whoſe Subſtitute he was: For, as the King's Counſel obſerved, if *Papillon* and *Dubois* had only brought their Action to obtain Satisfaction for their Loſs of the Shrievalty, this might have been done as well half a Year afterwards, and with more Probability of Succeſs, when he was out of his Office, than while he poſſeſſed the Chair.

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The Trial of THOMAS ROSEWELL, a Diſſenting Preacher, for *High-Treaſon*, at the *King's-Bench-Bar*, on the 18th of *November*, 1684. *Mich.* 36 *Car.* II.

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Roſewell's *Trial.*

The Indictment.

THE Indictment charged, That the Priſoner, *Thomas Roſewell*, on the 14th of *September*, in the 36th Year of the King, at the Pariſh of *Rotherhith*, in the County of *Surrey*, did compaſs and imagine the Death of his Majeſty, and to raiſe a Rebellion; and that, to accompliſh his ſaid traitorous Purpoſes, he did, at the Time and Place aforeſaid, in a certain unlawful Aſſembly, ſpeak, aſſert and declare the following Words, *(viz.)* That the People made a Flocking to the King, upon Pretence of healing the King's Evil, which he could not do; but that They, meaning himſelf, and other traitorous Perſons, the King's Subjects, were the Perſons they ought to flock to, becauſe they were Prieſts and Prophets, who by their Prayers could heal the Dolours and Griefs of the People: That they had had two wicked Kings together, meaning King *Charles* I. and King *Charles* II. who had permitted Popery to enter in under their Noſes; whom they could reſemble to no other Perſon but to the moſt wicked *Jeroboam:* And that if they, meaning the ſaid evil-diſpoſed Perſons, unlawfully aſſembled, would ſtand to their Principles, he did not fear but they would overcome their Enemies, meaning the King and his Subjects, as in former Times, with Rams-Horns, broken Platters, and a Stone in a Sling: All which was laid to be againſt the Duty of his Allegiance, the King's Peace, *&c.*

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The Evidence.

The Witneſſes being called, *Elizabeth Smith* was ſworn, and depoſed, That the Priſoner preached at ſeveral private Houſes, and had a publick Meeting-Houſe of his own in *Salisbury-ſtreet*, near his own Dwelling-Houſe in *Rotherhith*, where there uſed to aſſemble, three or four hundred at a Time. That preaching at Capt. *Daniel Weldy*'s Houſe on the 14th of *September*, 1684. he uſed the Expreſſions laid in the Indictment *(viz.) The People make a Flocking to the King*, &c. That there were two lower Rooms, and two Chambers, full of People, that came to hear the Priſoner, who ſtood in a Door upon the Stairs, ſo that his Voice might be heard above and below.

She depoſed further, That ſhe had been offered two hundred Pounds not to come in a Witneſs againſt Mr. *Roſewell*.

Mrs. *Hilton*, who went with the former Witneſs to the ſaid Meeting, on *Sunday* the 14th of *September*, depoſed, That ſhe heard the Priſoner ſpeak the Words laid in the Indictment: Adding, that they returned home about two of the Clock, and Mrs. *Smith*, the firſt Witneſs, immediately wrote down the Words: That the Exerciſe began at Seven in the Morning; and the firſt Part of it being over, the Priſoner went to Dinner, and abundance of the Congregation eat Sweetmeats, Biſcuits, *&c.* during his Abſence.

Mrs. *Farrar* depoſed, That ſhe was at the ſame Meeting and heard him ſay, It was not the King that cured the Evil, but it is we they ſhould flock to; for we are Prieſts and Prophets, that by our Prayers do cure the Grievances of the People. He ſaid alſo, That we had had two wicked Kings together; and bid the People ſtand to their Principles, and in time they ſhould overcome their Enemies.

That at another meeting ſhe heard him pray, That he might not offend the Lord in not praying for the King; but the Lord might pleaſe to open his Eyes, or Turn the Times.

Then the Court acquainting Mr. *Roſewell*, that he might enter upon his Defence, he deſired the Indictment might be read again in *Latin*. After which, he objected to the *Latin*. that *Morbus Regni Anglici* was the Diſeaſe of the *Engliſh* Kingdom, and could not be made to ſignify the King's Evil.

L. C. J. No, no, it is, *Morbus Regni*, *Anglicè*, *the King's Evil*; there being no apt Word in the Law for that Diſtemper, they help it with an *Anglicè*.

Roſewell. But, my Lord, there are proper Words for the Diſeaſe, as *Struma*, and *Scrofula*, and not *Morbus Regni*.

L. C. J. Phyſicians may uſe thoſe Words, but we muſt keep to the legal Names and Phraſes; and where we have not a proper Word, we uſe an *Anglicè* to expreſs what we mean.

Roſewell. Then there is another Phraſe I object to, *viz. Nos habuimus nunc duos iniquos Reges inſimul:* This cannot be underſtood of two Kings one after another; but *inſimul* makes them to be both at once. Theſe two Words, *inſimul*, and *nunc*, both ſignify the preſent Time; it ſhould have been *ſucceſſivè*.

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L. C. J. Then it had not agreed with your Words; which are, That we had two wicked Kings together.

Roſewell. If that be an Angliciſm, this cannot be true *Latin*.

L. C. J. If it be a Blunder in *Latin*, it is one of your making, for you ſpoke it ſo in *Engliſh*; and the Indictment in *Latin* muſt exactly purſue your *Engliſh*.

Roſewell. Then here is *Romanam Superſtitionem* made to ſignify Popery: Now there may be Superſtition in the Church of *Rome*, and yet that not be the Thing we call Popery.

L. C. J. Therefore, becauſe *Romana Superſtitio* may be too general an Expreſſion, we have aſcertained it with an *Anglicè*.

Roſewell. Then my Lord it is ſaid, in *eorum conſpectu*, under their Noſes. Now if the *Latin* in the Indictment is exactly to purſue the *Engliſh*, it ſhould have been, *ſub naribus illorum*.

L. C. J. Suffer Rebellion, or Conventicles, under your Noſes; are theſe Things, *ſub naribus*, or *in conſpectu*.

Roſewell. Theſe Words could not be ſpoken of the late King, and this King; for the firſt died a zealous Proteſtant, and his preſent Majeſty has often declared againſt Popery.

L. C. J. But it was the Pretence of Popery and Arbitrary Power that brought the firſt to the Block; and the Cry of every ſeditious factious Fellow is againſt Popery now, as if it was juſt breaking in upon us, and the Government abetted it; and the Words are laid in the Indictment, as ſpoken, *falſo & malitioſe*.

Roſewell. Then, my Lord, it is ſaid, *Si ipſi ſtarent ad Fundamentalia eorum.* How comes *Fundamentalia* to ſignify Principles?

L. C. J. The *Latin* Bible expreſſeth them by *Fundamentalia: If the Foundations be deſtroyed*, *&c.*

Roſewell. Then it is ſaid, *Si ipſi*, which muſt refer to the two wicked Kings that were ſpoken of juſt before.

L. C. J. No, that was ſpoken of your Congregation if they would ſtand to their Principles, *&c.*

Roſewell. It is ſaid *ipſe non timebat quin*--- This is the third Perſon, and the ſingular Number.

Sol. Gen. The Jurors that find this Indictment ſay, that he ſaid ſo; and that muſt be in the third Perſon.

Then Mr. *Roſewell* deſired he might have Liberty to declare what the Words of his Sermon really were; and in the moſt ſolemn Manner averred, That he did not ſpeak the Words in the Order, or with the Intention the Witneſſes had teſtified. And then called ſome Witneſſes, who took Notes at his Meeting, to ſhew what the Words were, and what Application he made of them.

The Priſoner's Witneſſes.

Mr. *Thomas Hudſon*, being called as a Witneſs for the Priſoner, depoſed, That he was at the Meeting mentioned by the Witneſſes to be held the 14th of *September*, and that in the Morning the Priſoner did not preach, but expound

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expound the 20th Chapter of *Geneſis*; and took Occaſion from thence to ſpeak of the Worth and Value of the Prayers of God's Prophets ſaying, *They were good to cure the King's Evil*; and inſtanced in the Prophet that came to *Jeroboam*, by whoſe Prayer that King's wither'd Arm was reſtored.

It being demanded what Application the Priſoner made when he ſpoke of the two wicked Kings; *Hudſon* anſwered, He ſaid, if *Abraham* fell, and *Jehoſhaphat* fell, and *Sampſon* and *Peter* fell, What are we? *Let him that ſtandeth take heed leſt he fall.* Then he was asked, How he apprehended that about the King's Evil was meant? *Hudſon* anſwered, He did not believe it was ſpoken with reſpect to that Diſeaſe called the King's Evil; becauſe it was ſpoken with Reference to the Diſeaſe the King was under: And as to what was mentioned about the Rams-horns, that was in his Sermon in the Afternoon, where he ſhewed how God could by very ſmall Means bring great Things to paſs; inſtancing in *Moſes*'s Rod, *Gideon*'s broken Pitchers, the ſounding of Ram's-horns, whereby the Walls of *Jericho* fell down, and the like.

Roſewell demanding if he had heard the King of *England* mentioned, *Hudſon* anſwered He prayed for the King, or elſe he did not hear a Word of any King that Day, unleſs the Kings in the Scripture. He prayed heartily that God would bleſs the King, and enable him to govern his People; and uſed to ſay, God forbid he ſhould ſin againſt God in neglecting to pray for the King: And *prayed God would remove all evil Counſellors from him.*

The Chief Juſtice anſwered, He did not queſtion that; and he remembred their praying in *Weſtminſter-hall* for the doing his late Majeſty Juſtice; and they knew where that ended.

Atkinſon, another Witneſs, depoſed, That at the Meeting the Priſoner expounded the 20th Chapter of *Geneſis*; and obſerving how *Abraham* bid *Sarah* ſay ſhe was his Siſter, he inferred that a Child of God might fall into the ſame Sin again and again, inſtancing in *Lot*'s committing Inceſt twice, *Peter*'s denying his Lord three Times, *Sampſon*'s taking two Wives of the *Philiſtines*, and *Jehoſhaphat*'s joining with two wicked Kings. And he ſaid A godly Man, by his Prayers, might help to cure the King's Evil; but he heard nothing of the King of *England*, or any thing like what the King's Witneſſes had teſtified: And ſeveral more of the Priſoner's Witneſſes confirmed what theſe had ſaid.

Other Witneſſes appeared to the Priſoner's Character, and ſaid he was an honeſt Man, and a loyal Subject, and uſed to pray heartily for the King: And *Atkinſon* being called again, depoſed, That the Priſoner kept the 30th of *January* as a Faſt, and preached on this Text, *Pray for Kings, and all in Authority*; aſſerting, That Kingly Government was moſt agreeable to the Word of God.

Then the Priſoner called ſeveral Witneſſes to diſcredit Mr. *Smith*, one of the King's Witneſſes, ſome of whom ſaid that he would have perſuaded them to have appeared as Witneſſes againſt Recuſants for holding Conventicles, or being preſent at them, when they knew nothing of the Matter; and that he had ſworn falſly againſt ſome for being at Conventicles.

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Sir *John Talbot* depoſed, that Mrs. *Hilton*, another of the King's Witneſſes, lived ten Years in his Family, but uſed to tell Lies and Stories, and bubbled ſome Gentlemen of their Money, by pretending ſhe had an Intereſt in Mrs. *Jones*, a Lady of a good Fortune. And another Witneſs depoſed, That *Hilton* had but an indifferent Character.

Roſewell proceeds in his Defence.

Then Mr. *Roſewell* proceeded to make his Obſervations on the Evidence, and ſaid, That what he ſhould now ſpeak, was as much in reſpect of the precious Souls of thoſe who were concerned in the Proſecution, or trying of him, as of his own Safety; and that, though Strangers, he would lay down his Life to be inſtrumental in ſaving any one of their Souls. He declared his Incapacity to make a regular Defence before ſuch learned Gentlemen of the long Robe, and thanked his Lordſhip, and the Court, for the Indulgence ſhewn to his Infirmities. Then he obſerved that the Witneſſes varied in their Evidence; for Mrs. *Smith* ſwore the Text was the 21ſt of *Geneſis*, and Mrs. *Hilton* ſwears to the 20th, and therefore they could not be deemed two legal Witneſſes, or either of them deſerve Credit. His next Obſervation was, That they teſtified the Words charged in the Indictment, were delivered all in the Morning-Exerciſe, when he had proved the contrary; and left it to the Jury if they were two credible Witneſſes. That they varied likewiſe in this: That one depoſed they met at Capt. *Daniel Weldy*'s, and the other at Mr. *Daniel*'s; and if they were out in one thing, they might be ſo in another. He reflected on their great Wickedneſs, in applying what was innocently ſpoken and meant to the late King and his preſent Majeſty whom he had proved he always prayed for. He added, that they had not only ſworn him a Knave, but a Fool, and a Madman, to ſpeak ſuch abſurd, incoherent, ſoleciſtical, and nonſenſical Things; and he had brought Perſons to teſtify, no ſuch Things were ſaid; and that he was always for Monarchy, and againſt Anarchy, and continually obſerved the 30th of *January*, and the 20th of *May*, and inveighed againſt thoſe that were Rebels againſt his preſent Majeſty, or had been concerned in that barbarous Act againſt his Royal Father, which he utterly abhorred: And obſerved further, That ſeveral Gentlemen of the Church of *England* had teſtified concerning his Converſation, who had known him eight, ten, or twelve Years: That he hoped his Lordſhip and the Jury took Notice that the Witneſſes would ſwear and forſwear any Thing; and that one of them had made Compoſitions, and was a Woman of lewd Converſation: He obſerved likewiſe, that they muſt have incredible Memories, that they could exactly agree in every Circumſtance, and in each particular Word, which he believed the Jury would not undertake to repeat upon their Notes; and ſaid, That he laid the great Streſs of his Defence, not on the Incredibility and Improbability,

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bability, but the Impoſſibility of the Truth of the Evidence they had given. He confeſſed, if that were a Crime, that it was his Practice to expound the Scriptures to the People; for the People, he ſaid, periſhed for lack of Knowledge; and that it was by the Knowledge of our Lord Jeſus Chriſt, that they muſt come to Life and Salvation.

L. C. J. Mr. *Attorney*, will you, or any of the King's Counſel, ſay any thing in this Matter?

Att. Gen. No, my Lord; we leave it entirely to your Lordſhip.

The Lord Chief Juſtice in ſumming up the Evidence ſaid, That though a Man muſt have an obdurate Heart not to compaſſionate his Fellow-Creature in ſuch Circumſtances, yet the Priſoner's Denials, with the Imprecations he had made, and the Affirmations he had offered of what he had formerly done, and his appealing to God about his Innocency, was not to weigh with the Jury; for their Buſineſs, according to the Oath they had taken, was to know if they had Evidence given to ſatisfy them he was guilty according to that Evidence. He obſerved likewiſe, (though he ſaid he did not ſpeak it to affect this Caſe) that the Law does declare, that it was from theſe Seminaries of Sedition and factious Conventicles, and the Clubs and Cabals of diſcontented and irregular People, diſaffected to the Laws both of Church and State, that the great Miſchief and Confuſion that was brought upon us, and which at length brought us into the Diſtractions of the late Times, proceeded; and that he muſt ſay (whatever the Priſoner thought) that Bleſſed Martyr King *Charles* I. was by ſuch Means brought to that horrid, accurſed, murderous Death and End, under the Pretence of Religion, and that perhaps, there were as many Rebels raiſed againſt the late King, by the beating of the Cuſhion in the Pulpit, as by the beating of the Drum in the Street. He obſerved alſo, that they picked out and choſe Occaſional Texts, of binding Kings in Chains, and their Nobles in Fetters of Iron; and raiſed ſuch Doctrines from Texts of Scripture, as were intended to quite other Purpoſes, to make People kill and ſlay God's Anointed, under Pretence of ſaving and protecting the Anointed of God. He obſerved, that the Priſoner ſaid, he undertook to expound and teach his People the Knowledge of God: That it was a very good Leſſon to be learnt and taught; but (without any Reflection on the Gentlemen at the Bar) he thought we had Churchmen of as great Learning, Piety and Virtue, as he could pretend to; and that whoever preaches at a Conventicle, cannot preach Obedience to the Civil Magiſtrate; becauſe in that very preaching, they are acting Diſobedience againſt his Laws: Then he ſhewed, that the Thing now before them was a Queſtion of a different Nature, that they were not to try whether he Preached at a Conventicle, or whether in ſo doing it was againſt Law; but whether he did ſpeak Words of the ſame Subſtance, to the ſame Effect and Intent that are compriſed in the Indictment; therefore they were to try and conſider, whether the three Witneſſes, produced againſt him, did ſwear true, or were guilty of wilful Perjury.

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Then the Jury withdrew, and after ſome Time returned with their Verdict, that the Priſoner was *Guilty*.

He is convicted.

Mr. *Roſewell* being brought into Court again on the 24th of *November*, to hear Judgment, objected, That there was not any Crime ſufficiently ſet forth in the Indictment to give Judgment upon; for it was not ſufficient to ſay in an Indictment of Treaſon in general, that a Man did intend to depoſe the King, or raiſe a Rebellion; but there ought to be ſome Overt Act poſitively aſſerted to be done by that Perſon, which was Treaſon of it ſelf without the *Inuendo*. He inſiſted, as he had done at the Trial, that the Words were repugnant and inſenſible; and deſired Judgment might be arreſted, and Counſel aſſigned him to argue his Exceptions: Whereupon Counſel were aſſigned him, and on *Thurſday* the 27th of *November*, the Exceptions were argued.

His Exceptions in Arreſt of Judgment.

Mr. *Wallop*, of Counſel for the Priſoner, inſiſted, That the Words laid in the Indictment, diſcharged of *Inuendo*'s, were looſe, extravagant, inſenſible Words, rather than Treaſon, and held, that if it was only the *Inuendo*'s that made them treaſonable, and thoſe *Inuendo*'s were not warranted by Law, they could not effect the Priſoner; and that it is a Rule in Law, that no *Inuendo* could warrantably be inſerted in an Indictment, Information, or Declaration, upon an Action of the Caſe for Words, unleſs the Defendant be firſt averred, (and that directly) to have mentioned a Perſon in certain himſelf, to whom thoſe Words may be referred; and in this Caſe, how could the Hearer underſtand who the Preacher meant, and ſo be influenced to Rebellion, unleſs the Preacher himſelf had named the King to whom the Words he ſpoke ſhould be referred? That as to the firſt Words laid in the Indictment, *viz. Quod populus*, &c. The People (meaning the Subjects of our Lord the King) keep a flocking to the King to cure the King's-Evil, which he cannot do, *&c.* Here *Populus* might intend any People: It might intend the *French* People flocking to the *French* King (for he pretended to heal the People in the ſame manner). As to the next Words, *Nos habuimus nunc duos iniquos Reges inſimul*; We (meaning the Subjects of the King) have had two wicked Kings (meaning King *Charles* I. and this King) together. That there was no mention of any Kings before in the Diſcourſe, to which, according to the Office of an *Inuendo*, theſe Words are to be applied, according to the 4 *Rep.* fo. 17. *B. int. Jeames & Rutlech*, being an Action of the Caſe for Words; where two Things were reſolved, *Firſt*, That the Perſon ſcandalized muſt be aſcertained: And *Secondly*, That the Words ſpoken muſt be apparent Slander.---And he held, That an *Inuendo* was not ſufficient to give an original Certainty, where a Certainty is not fixed before. The Defendant himſelf muſt ſet up ſuch a Light, as will carry the Intention to the End of the Diſcourſe.---And

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further, That the Words *habuimus nunc* were inconſiſtent, *Habuimus* referring to the Time paſt, and *nunc* to the Time preſent; and that if *habuimus* were to take Place, it might refer to any two Kings before the Conqueſt.--- Then he proceeded to the Words which ſeemed to be moſt relied on, *viz.* if they would ſtand to their Principles, he did not queſtion but they ſhould be able *Inimicos ſuos vincere*, (*Inuendo* the King and the Government.) Now there was no Mention of any Enemies before, no Averment that the King was Enemy to any Body, or any Body to him; and therefore the *Inuendo* was to be rejected; it could not put ſuch a violence and Force upon Words, as to make them Treaſon, when in themſelves they have no ſuch Meaning; and that by the Law of *England*, in all dubious, uncertain, and general Caſes, the moſt benign and candid Interpretation is to be taken; ſo if there were a Doubt, as to the meaning of the Words, the moſt favourable Conſtruction ought to be made.

Mr. *Pollexfen*, being alſo of Counſel for the Priſoner, brought his Argument, That ſome ſort of Words might be an Overt Act of Treaſon; but that the Statute of 13 *Car.* 2. on which the Priſoner was indicted, had diſtinguiſhed between Words of Treaſon and Miſdemeanour; and was about to ſhew that theſe for which the Priſoner was indicted, were but a Miſdemeanour by that Statute.

Here Mr. Attorney interrupted him, and ſaid, he did not underſtand it was his Lordſhip's Pleaſure they ſhould argue, Whether the Words were Treaſon, being found to be ſpoken with ſuch an Intention; but whether the *Inuendo*'s had been ſufficiently laid to maintain the Indictment in Point of Form?

Mr. *Pollexfen*. My Lord, What I would obſerve is, That the Treaſonable printing, writing or ſpeaking, mentioned in the firſt Clauſe of that Statute, muſt be of ſuch Words as ſhall intend the Death, Bodily Hurt, Reſtraint, or Impriſonment of the King's Perſon, or levying War. And that if the Words laid in the Indictment, are in themſelves ſo uncertain, or ſuch as do not tend or relate to the preſent King, or the preſent Government, to ſtir up Sedition or Rebellion againſt them, then they will not be Treaſon; becauſe they do not ſo relate. That the Words laid in the Indictment ſeemed to run thus; We have had now two wicked Kings together, who have ſuffered Popery to come in under their Noſes; we cannot compare them to any but wicked *Jeroboam:* And if [they] would ſtand to their Principles, then he did not doubt but [they] ſhould overcome their Enemies, as in former Times, *&c.* And, if according to Grammar, *ipſi* [they] being a Relative, muſt refer to that which laſt before went, there is nothing in the Sentence that went before, but we (that is, he and the People that heard him) and the two Kings that he ſpoke of; and the two Kings being laſt ſpoke of, it muſt be underſtood of the Kings; for it would be pretty hard to apply the *Nos habuimus nunc duos iniquos Reges*, to the *ipſi qui ſtarent ad Fundamentalia*. But in all Probability he ſpoke it thus, and if we do but ſtand to our Principles, I do not doubt but we ſhall overcome our Enemies as formerly, *&c.* But *ipſi* is a Variation of the Perſon, and according to Grammatical Conſtruction, it is evident how it ought to be expounded. This laſt ſeems to be the natural Reading of the Words; but the Indictment has not purſued them, but inſtead of that, has made Nonſenſe: For I do not ſee how *ipſi* can be me and my Auditors.

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But paſſing by this, how will they make the Word *Inimicos* to mean the King and his Subjects? For it is not ſurely an *Inuendo* that can make my Words have any other Senſe than I that ſpoke them intended. The bare ſetting down the Words with *Inuendo*'s, are not ſufficient to maintain an Action or an Indictment; for there are but two Ways to apply Words that are uncertain; the one is by laying a *Colloquium* precedent of ſuch Matter as leads to the Senſe of the Words, (and whenever that is done, the *Colloquium* muſt be proved in the Evidence.) The other Way is, where Words are laid in a Declaration, with an Averment that they were ſpoken of ſuch a Perſon; then the Words with an *Inuendo* after that Averment ſhew ſufficiently what is meant by them: As where one ſays, your Brother, your Maſter, your Servant, or your Son, is a Thief: Here the Words themſelves do not expreſs the Man of whom the Scandal is raiſed; but they give ſuch a Deſcription of him, that the Hearers may know who is meant: And then if in the Declaration it is averred that the Plaintiff was his Brother, his Maſter, his Servant, or his Son, and theſe Words were ſpoken of him, and thereby it comes to be made apparent to the Court who is meant, it is right; but then the Averment muſt be proved, or the Action cannot be maintained. Theſe are the only Ways that are allowed to maintain any ſuch Action; and there the *Inuendo* comes very properly to aſſiſt the Averment or *Colloquium*. But in this Caſe, here is nothing but a bare *Inuendo* that ſuch and ſuch are meant, without either a *Colloquium*, that there was a Diſcourſe concerning ſuch and ſuch Perſons, or an Averment that the Words were ſpoken of the Perſons.

Mr. Attorney replied, That where ever Words by ſtrong and pregnant Intendment do carry Slander, and of ſuch a particular Perſon, there the Books are expreſs, that there needs no Averment, that they were ſpoken of ſuch a Perſon; and for this he cited the Caſe of *Fleetwood* and *Curle*. *Hob.* 267.

That this was not only ſo in Actions of the Caſe for Slander, but alſo in Indictments and Informations; and here every one knew there was but one King and one Government: And when Words are laid, to be ſpoken to excite Commotions or Rebellions, they are but external Declarations of the Mind; his inward Thoughts were the Treaſon: Indeed the laying that alone, That he did ſo and ſo compaſs and imagine, without ſome outward Declaration, would not be good in an Indictment, any more than the outward Declaration, without the inward Intention, would be ſufficient: But in this Indictment it was laid, that

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he did imagine to raiſe Rebellion and War within the Kingdom, to ſtir up the People againſt the King, and to depoſe the King, and bring him to Death; and then goes on and ſays, to the End he might effect this Treaſon he ſpoke ſuch and ſuch Words, which by the late Statute amount to Treaſon). Now if theſe Words did not in their own Nature import a Tendency to invite and ſtir up the People to Rebellion and War againſt the King, it would be naught with *Inuendo's*; and ſo it would be, if there were twenty Averments. He added, That this Indictment was according to former Precedents, and cited 3 *Hen.* 8. *Rot.* 17. the Indictment againſt the Lord *Gray*; the 2 *Jac.* Lord *Cobham's* Caſe, *Paſch.* 17. *Jac. Rot.* 40. *Williams's* Caſe, *Fitzharris's* Caſe, where the Duke of *York* was deſcribed in the Libel by the Letters D. of *Y.* and ſometimes only *Y.* and the King by the Letters *Ch.* and the *Inuendo* is (meaning our Sovereign Lord the King,) and there is nothing averred; and that in Colonel *Sidney's* Caſe, there was no Averment, but the Words of the Libel are brought in alſo with an *Inuendo:* From whence he inferred, that the charging Words to be ſpoken to ſtir up Sedition and Rebellion within the Kingdom, without the Help of any Averment whatſoever, was ſufficient.

That to ſay, Enemies was a very general Word, and therefore a bare *Inuendo* could not make it mean one more than another, was odd; for he ſaid it to a great Congregation, being unlawfully aſſembled at a Conventicle: And when he ſaid, That [they] ſhould overcome their Enemies, the Government muſt be intended.-----Beſides, it was plain who he meant, by what he ſaid before: That the King was a wicked Man, and repreſented him as an Enemy to God and Man, by introducing Popery into the Kingdom: And it was well known, that the conſtant Cry in thoſe Conventicles was, that we ſhould be all overrun with Popery, which were conſiderable Circumſtances in this Caſe. That it was the ſame Thing as if the Words had been ſpoken at the Head of an Army, they being ſpoke to People aſſembled contrary to the Laws of the Land, and in Defiance of the Government. Nor did he ſee how it was poſſible the Words could be better laid, being ſworn exactly as they were laid; and eſpecially, being found to be all ſpoken to raiſe Sedition and Rebellion.

Mr. Sollicitor alſo inſiſted, That the Form of the Indictment was good. He ſaid, had the Words been, *Procure your ſelves Arms, and make yourſelves ready by ſuch a Day, and go to* Whitehall, *and kill the King*; no one would have affirmed it was neceſſary they ſhould ſay in the Indictment, *Dixit de Populo, vel de Rege*, ſo and ſo, becauſe the Words plainly import their own Meaning, and ſo they do in this Caſe; and therefore to ſay, *Dixit de Rege, dixit de Populo*, would be impertinent. That indeed it was neceſſary, in Actions of the Caſe for Slander, to aver, *Dixit de querente*, for he muſt aſcertain the Perſon of whom the Words are ſpoken, to be the very Plaintiff, becauſe there may be ſeveral of the ſame Name; but where Words are pregnant, and full of themſelves, there needs no Averment.

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My Lord Chief Juſtice ſaid, That the Precedents Mr. Attorney had cited, had very little Weight with him: And though he made no doubt, that if one ſhould bid Men prepare Arms, and go to *Whitehall*, and kill the King (according to the Caſe Mr. Sollicitor had put) thoſe Words would be an Overt Act of High-Treaſon: For there the Words import in themſelves who is meant, and are therefore good without any Averment: But had he bid them Riſe, and go to *Whitehall*, and they ſhould overcome their Enemies; there would be no Neceſſity of intending the King was their Enemy, unleſs it had been plainly declared by the Party himſelf, who he meant. And there was no doubt, if they had averred, that thoſe Words were ſpoken of the King and the People of *England*, it would have made it more certain. And if they had laid the Words thus, *If we will ſtand to our Principles, we ſhall deſtroy them*; the Caſe would have been ten Times ſtronger. That he thought the Words, *We have had two wicked Kings together, who have ſuffered Popery to come in under their Noſes*, related plainly enough to the late King, and the preſent: But that when they came to ſpeak of Enemies, *Inuendo* the King and his Subjects; having talked of no Body before, that they were ſaid to have an Enmity againſt; this, he doubted, was to ſtretch it a little too far. -----Then, as to the Difference of Perſons, he obſerved they began in the firſt Perſon Plural, We have had two wicked Kings together; *Nos habuimus nunc duos iniquos Reges inſimul:* And afterwards ſay, If they, *ipſi*, will ſtand to their Principles, he did not doubt but they ſhould overcome their Enemies. If they had laid them (as any one muſt believe they were ſpoken) *If you or we will ſtand to our Principles, we ſhall overcome them*; and a Jury had found that theſe Words were ſpoken with ſuch an Intention as is laid in the Indictment, it would have been Treaſon: But when they come to ſay *ipſi*, They, in the third Perſon, and there are no third Perſon ſpoken of but the two Kings, who are alſo the laſt Antecedent, who could this relate to? Had they put *Nos* inſtead of *Ipſi*, it had been better underſtood, and better Grammar; for when one ſpeaks in the third Perſon, he excludes both himſelf, and thoſe he ſpeaks to, and an *inuendo* cannot help it.

Sol. Gen. If we had laid it otherwiſe, we ſhould not have laid it as the Truth is, for the Word ſpoken was, *They*.

L. C. J. No doubt, he ſaid, *If you will ſtand to your Principles*; it is Nonſenſe elſe.

Sol. Gen. I take that to be well enough, for there are three Sentences: The firſt is, *That the People make a Flocking to the King*, &c. *Quod populus*, &c. The next is, *Quod nos habuimus*, &c. And the third is, *Quod ſi ipſi*, &c. Now *Quod* governs the particular Sentence by itſelf, and it is good in Grammar and Senſe too.

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L. C. J. You lay it in the Indictment to be an entire Speech, and then the Relative muſt go to the laſt Antecedent.

Juſt. *Wythens.* If you make it ſeveral peeches, it is ten Times worſe; for then the latter Part is ſo uncertain, without an Averment of whom the Words were ſpoken, that it can never be made good.

Sol. Gen. It was an entire Speech; but conſiſted of ſeveral Sentences, which in common Underſtanding, muſt have relation to one another.

Juſt. *Walcot.* I think that the Averment, that theſe Words were ſpoken of the King, is a Point of Fact that ought to be averred, and proved.

L. C. J. Our Books require greater Certainty in Indictments, than in Actions on the Caſe; and in Cauſes of this Nature we are bound to be of Counſel for the Priſoner (which we are not in Cauſes not Capital.) And we have not one Act of Parliament to help the Defect of Form in Indictments, as we have in Civil Actions; which ſhews that our Anceſtors would not help Uncertainties, or Inſufficiencies in Form, where the Life of a Man was concerned. We will conſider of it: Take back the Priſoner; and you ſhall have a Rule to bring him, when the Court is ready for Judgment.

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But no Judgment being given this Term, Mr. *Roſewell* procured the King's Pardon before the next Term; and upon pleading it, was diſcharged.

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Baillie's *Trial.*

The Trial of ROBERT BAILLIE of *Jerviſwood*, for *High-Treaſon*, before GEORGE, Earl of *Linlithgow*, Lord Juſtice-General of the Kingdom of *Scotland*; and the reſt of the Lords of Juſticiary at *Edinburgh*, *December*, 23, 1684. 36 *Car.* II.

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The Charge.

THE Dittay, or Indictment, ſets forth, that the Priſoner having conceived extraordinary Malice againſt the King and Government, and deſigning to debar his Royal Highneſs, his Majeſty's only Brother, from his Right of Succeſſion, did endeavour to get himſelf elected one of the Commiſſioners for negotiating a Settlement of a Colony in *Carolina*, in or about the Month of *May*, 1683, that he might have the freer Acceſs to the Earls of *Shaftesbury* and *Eſſex*, the Lord *Ruſſel*, and others, who had entered into a Conſpiracy in *England*, againſt his Majeſty's Perſon and Government; and with Colonel *Rumſey*, *Walcot*, *Weſt*, *Ferguſon*, and others, who had conſpired the Murder of his Majeſty, and of his Royal Highneſs: That when he could not get himſelf elected one of the ſaid Commiſſioners, he went to *London* at his own Expence; declaring, his Deſign was to puſh forward the People of *England*, who did nothing but talk: That he did, at *London*, negotiate with the ſaid *Engliſh* Conſpirators, about a Sum of Money for the Lord *Argyle*, a declared Traitor, for procuring Men and Arms for raiſing a Rebellion againſt his Majeſty, and invading his native Country of *Scotland*; and endeavoured to perſuade *Argyle* to take any Sum, rather than not engage in the Deſign.

That having aſſured his Correſpondents in *Scotland*, the *Engliſh* were reſolved to exclude the Duke of *York* from the Succeſſion, thereby to encourage them to promote the ſaid Rebellion and Excluſion; he entered into an intimate Correſpondence with *Robert Ferguſon*, Sir *Thomas Armſtrong*, Colonel *Rumſey*, and *Walcot*, who were concerned in that Part of the Conſpiracy, for aſſaſſinating his Majeſty and the Duke; and did ſet up ſeveral Nights with them in Conſultation about it.

A Jury of Fifteen impanelled.

To which Indictment the Priſoner pleading *Not Guilty*, an Aſſize or Jury was ſworn, conſiſting of the Earls of *Strathmore* and *Balcarras*, Sir *George Skeen*, and twelve Gentlemen more.

Objections of the Priſoner's Counſel to the Charge

The Counſel for the Priſoner objected, That he ought to have had fifteen Days Notice of Trial, which the Court over-ruled; declaring, That this was not the Practice where the Perſon accuſed was a Priſoner; but that he might be tried upon twenty-four Hours Notice.

The Priſoner's Counſel alſo objected, That he had been proſecuted before the Council, and fined a conſiderable Sum for the ſame Offence; and therefore he ought not to be proſecuted again for it.

To which his Majeſty's Advocate replied, That he confined himſelf to ſuch Facts as were High-Treaſon, and not mentioned in that Deciſion of the Council: And this Objection was alſo over-ruled by the Court.

and the Witneſs.

The Earl of *Tarras* being called as a Witneſs for the King, the Priſoner's Counſel objected, That the Earl was an Accomplice in the ſame Crime, and had confeſſed the Fact; and that he now came to give Evidence againſt the Priſoner, in order to merit his Pardon, and therefore was not a legal Witneſs: But the Court ruled, that in Caſes of Treaſon, Accomplices were legal Witneſſes, and ordered his Teſtimony to be received.

The Evidence.

Then the Earl of *Tarras* was ſworn, and depoſed, That the Priſoner went to *London*, and concerted Meaſures with the *Engliſh* Conſpirators, negotiating with them for a Sum of Money to enable the Earl of *Argyle* to raiſe Forces, and promote an Invaſion and Rebellion, as laid in the Indictment: That the Priſoner wrote the Deponent Word by one *Martin*, that the Earl of *Argyle* was to have 10,000 *l.* but his Countrymen at *London* would have had 30,000 *l.* for him) which was to be ſent over to *Argyle* in *Holland* to provide Arms; and he was to land in the Weſt Highlands of *Scotland.*

Alexander Monro confirmed the Teſtimony of the former Witneſs, adding, That *Martin* was

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was sent down to *Scotland* by a Club of the Conſpirators, (who met at the Priſoner's Chambers in *London*) to inform them, they ſhould not riſe, till there was a Riſing in *England*: And that on *Martin*'s Return to *England*, the Priſoner told the Deponent, Matters were in ſuch a Condition in *Scotland*, that a little would kindle the Fire of Rebellion.

Mr. *William Carſtairs* teſtified, That the Priſoner was at *London* concerting Meaſures with the *Engliſh* Conſpirators about *Chriſtmas*, 1682. That he met the Priſoner at Mr. *Shepherd*'s Houſe in *London*, where the Lord *Ruſſel* being preſent, the Deponent mentioned to his Lordſhip the Propoſal of 30,000 *l.* for the Earl of *Argyle*, and the raiſing a thouſand Horſe and Dragoons: And that the Lord *Ruſſel* told the Deponent, they could not raiſe ſo much at that Time; but if they had ten thouſand Pounds to begin with, that would draw People in; and when they were once in, they would ſoon be brought to more: But as to the thouſand Horſe and Dragoons, he could ſay nothing to it at preſent; that muſt be concerted on the Borders. That it was reſolved by the *Scotiſh* Agents in *London*, to ſend *Martin* to *Scotland* to deſire their Friends to hinder the Country from riſing or taking raſh Reſolutions, till they ſaw how Matters went in *England*: And that the Deponent heard of the Deſign of killing the King and Duke from Mr. *Shepherd*, who told him ſome were full upon it. That the Deponent communicated the Deſign to Dr. *Owen*, Mr. *Griffith*, and Mr. *Mede*, of *Stepney*, Diſſenting Preachers, who all concurred in it.

Shepherd's *Examination read as Evidence.*

Then his Majeſty's Advocate produced the Examination of *Thomas Shepherd*, of *London*, Merchant, taken upon Oath the 23d of *December* 1683, before the Right Hon. Mr. Secretary *Jenkins*.

He depoſed, That *Ferguſon* told him about *April* laſt, that an Inſurrection was intended both in *England* and *Scotland*; and that for ſettling that Affair betwixt the two Nations, Mr. *Baillie* the Priſoner, Mr. *Monro*, Sir *John Cockran*, Sir *Hugh* and Sir *George Campbel*, and ſome others, were come to Town: That the Deponent had ſome Acquaintance with the Priſoner Mr. *Monro*, and Sir *John Cockran*: And that the Priſoner told the Deponent, *Argyle* demanded 30,000 *l.* of the *Engliſh*, to capacitate him to begin the Buſineſs in *Scotland*; and that the Priſoner told the Deponent, that having talked with the Lord *Ruſſel* and others, he found an Impoſſibility of raiſing that Sum; that afterwards the Priſoner acquainted the Deponent, they were certainly promiſed 10,000 *l.* which was agreed to be paid into the Deponent's Hands, in order to be remitted to *Holland*, for providing Arms. That both Sir *John Cockran* and the Priſoner lamented the Delays that were made in paying in the Money, and ſaid, *They feared it would be too little, if it were paid in.* And the Deponent being asked to explain what he meant by the Words *to capacitate him*, (Argyle) *to begin the Buſineſs?* He ſaid he underſtood by the Word *Buſineſs*, an Inſurrection in *Scotland*.

His Majeſty's Advocate alſo produced the Information of *Zachary Bourn*, of *London*, Brewer, taken upon Oath the 10th of *December* 1683, before the Right Hon. Mr. Secretary *Jenkins*.

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Bourn's Examination read as Evidence.

This Informant depoſed, That Mr. *Baillie*, the Priſoner, ſat up one Night, if not two, with Mr. *Ferguſon*, and went ſeveral Times in the Evening with him to the Duke of *Monmouth*, and the chief Managers of the Conſpiracy; that *Ferguſon* told the Deponent, that he, the ſaid *Baillie*, was the chief Man for the *Scots*, next to the Lord *Argyle*: That the ſaid *Baillie* did ſit up the greateſt Part of one Night with the ſaid *Ferguſon*; at which Time the Deponent believes they were buſy in preparing the intended Declaration; for that *Ferguſon* was about to ſhew the Deponent ſuch a Paper; but Company came up and prevented him: That *Ferguſon* told the Deponent, That the main Buſineſs of the ſaid *Baillie*, in meeting the ſaid Conſpirators, was, to get from them the 10,000 *l.* promiſed, for the buying Arms for the Inſurrection intended in *Scotland*.

His Majeſty's Advocate likewiſe produced ſeveral Warrants and Papers to prove that thoſe Depoſitions were ſigned by Sir *Leolin Jenkins*: And having ſummed up the Evidence, the Jury withdrew, and, on the 24th of *December*, brought in their Verdict, That the Priſoner was GUILTY of the Treaſons with which he was charged in the Indictment; and thereupon he received Sentence to be executed as a Traitor at the Market-Croſs in *Edinburgh*; and he was executed accordingly the ſame Afternoon.

He is convicted;

and executed.

Biſhop *Burnet*, in his firſt Volume of Poſthumous Hiſtory, reflects very ſeverely on the Government for trying and executing this Malcontent, his Kinſman and Countryman; but if it be obſerved, that there were upon his Jury two Noblemen, and thirteen Gentlemen of Quality, who unanimouſly found him guilty of the Treaſons he was charged with, though a Majority had been ſufficient to have convicted him by the Laws of *Scotland*; and that the Facts were proved beyond all Diſpute by Witneſſes that were known Friends of the Party. It is not eaſy to conceive what that Right Reverend Prelate could found his Clamours upon. I am apt to think his greateſt Quarrel to theſe Proceedings was, that they laid open and confirmed the Guilt of the *Engliſh* Conſpirators, with whom he himſelf appears to have been pretty cloſely engaged. It is obſervable, that the Biſhop touches upon the Evidence given at this Trial very ſlightly, chuſing rather to dwell upon the Hardſhips *Baillie* endured in Priſon, in order to move the Compaſſion of his Readers: And this is his conſtant Practice, when Facts are too evident to be denied, to ſlide them over, and endeavour to captivate the Mob with lamentable Relations of the Priſoner's Sufferings. He ſeems alſo to mention it as a Grievance, that *Baillie* was executed the ſame Afternoon Sentence paſſed upon him: But this was the uſual Practice in *Scotland*: And poſſibly they may not be much in the Wrong; for when a

Remarks on Baillie's Trial.

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Criminal knows his Death is ſo near and certain, in caſe he is caſt, he will probably be the leſs likely to prevaricate and trifle with his Judges; and the Truth may more eaſily be diſcovered, than where the Criminal has a Week or a Fortnight's Time allowed him, and an Opportunity of applying for a Pardon, or perhaps of making his Eſcape.

Diſney's *Treaſon.*

The next Paper we meet with, bound up among the State Trials, is called *The Trial of* William Diſney, *Eſq*; but in Truth there is nothing of the Trial there. The Compilers of that 7th Volume of Trials only tell us, he was tried by a ſpecial Commiſſion of Oyer and Terminer at the *Marſhalſea* in *Southwark*, on the 25th of *June* 1685. That he was indicted for printing and publiſhing a Treaſonable Paper againſt his Majeſty and the Government, entitled, *The Declaration of* James *Duke of* Monmouth, *and the Noblemen, Gentlemen, and others, now in Arms*, &c. That the Evidence was plain againſt him; and that the Priſoner making little or no Defence, was found guilty of High Treaſon, received Sentence of Death, and was executed at *Kennington-Common* in *Surry*, on *Monday* the 29th of *June* 1685. Such imperfect Pieces have the Collectors of the 7th and 8th Volumes of Trials thought fit to introduce into that Work, in which, no doubt, they were governed by their Maſters the Bookſellers, who are for putting in every Thing that may enlarge the Volume and enhance the Price, where they know there are ſome goods Things in the firſt Part of a Work that will carry off the additional Rubbiſh.

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The End of the Trials *in the Reign of King* CHARLES II.